

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

GORDA DUNIGAN, as Personal Representative
for the ESTATE OF JAMES DUNIGAN, Deceased,

Plaintiff,

v

Case No. 1:16-CV-01324
Hon. Janet T. Neff
Mag. Judge Ellen S. Carmody

BRONSON METHODIST HOSPITAL,

Defendant.

GEOFFREY N. FIEGER (P30441)
JAMES J. HARRINGTON, IV (P65351)
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EXHIBIT 8 (CORRECTED)

In the Matter Of:

DUNIGAN vs BRONSON METHODIST HOSPITAL, ET AL.

WERNER SPITZ, M.D.

March 20, 2018

Prepared for you by



Bingham Farms/Southfield • Grand Rapids

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1	UNITED STATES DISTRICT COURT	1	JOHN C. O'LOUGHLIN
2	WESTERN DISTRICT OF MICHIGAN	2	Smith, Haughey, Rice & Roegge, P.C.
3	SOUTHERN DIVISION	3	100 Monroe Center Street, NW
4		4	Grand Rapids, Michigan 49503
5	GORDA DUNIGAN, as Personal	5	(616) 774-8000
6	Representative for the ESTATE OF	6	joloughlin@shrr.com
7	JAMES DUNIGAN, Deceased,	7	Appearing (Telephonically) on behalf of the
8	Plaintiff,	8	Defendant, Bronson Methodist Hospital.
9	vs. Case No. 1:16-CV-01324	9	
10	Hon. Ellen S. Carmody	10	
11	BRONSON METHODIST HOSPITAL,	11	
12	Defendant,	12	
13	and	13	
14	GORDA DUNIGAN, as Personal	14	
15	Representative of the ESTATE OF	15	
16	JAMES DUNIGAN, Deceased,	16	
17	Plaintiff,	17	
18	vs. Case No. 1:16-CV-01325	18	
19	DEREK NUGENT, et al., Hon. Ellen S. Carmody	19	
20	Defendants.	20	
21	/	21	
22		22	
23		23	
24		24	
25		25	
		Page 2	Page 4
1	The Deposition of WERNER SPITZ, M.D., F.C.A.P.,	1	INDEX TO EXAMINATIONS
2	Taken at 23001 Greater Mack Avenue,	2	
3	St. Clair Shores, Michigan,	3	Witness
4	Commencing at 2:17 p.m.,	4	WERNER SPITZ, M.D. F.C.A.P.
5	Tuesday, March 20, 2018,	5	
6	Before Linda S. Wilson, CSR-0973.	6	EXAMINATION
7		7	BY MR. O'LOUGHLIN:
8	APPEARANCES:	8	EXAMINATION
9		9	BY MR. VANDERLAAN:
10	DONALD H. DAWSON, JR.	10	EXAMINATION
11	Fieger, Fieger, Kenney & Harrington	11	BY MR. DAWSON:
12	19390 West Ten Mile Road	12	RE-EXAMINATION
13	Southfield, Michigan 48075	13	BY MR. O'LOUGHLIN:
14	(248) 355-5555	14	
15	d.dawson@fiegerlaw.com	15	INDEX TO EXHIBITS
16	Appearing on behalf of the Plaintiff.	16	
17		17	Exhibit
18	ALLAN C. VANDER LAAN	18	(Exhibit attached to transcript.)
19	Cummings, McClorey, Davis & Acho, P.L.C.	19	
20	2851 Charlevoix Drive, SE, Suite 327	20	DEPOSITION EXHIBIT 1
21	Grand Rapids, Michigan 49546	21	21
22	(616) 975-7470	22	
23	avanderlaan@cmda-law.com	23	
24	Appearing (Telephonically) on behalf of the	24	
25	Defendants, Nugent, et al.	25	

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1 St. Clair Shores, Michigan		1 the Fieger law firm?
2 Tuesday, March 20, 2018		2 A. Well, nowhere near the total of course, but I really
3 2:17 p.m.		3 don't know. I have testified for the Fieger firm, and
4		4 I have also testified against the Fieger firm. So I
5 WERNER SPITZ, M.D., F.C.A.P.,		5 couldn't say. I don't really know. I have testified
6 was thereupon called as a witness herein, and after		6 a lot of times for and a fair number of times against
7 having first been duly sworn to testify to the truth,		7 the Fieger firm.
8 the whole truth and nothing but the truth, was		8 Q. Have you testified for the Fieger firm more than 100
9 examined and testified as follows:		9 times?
10 MR. O'LOUGHLIN: The record should reflect		10 A. I doubt that, but maybe 50.
11 that this is the deposition of Dr. Werner Spitz being		11 Q. The fee scheduled we were provided in this case
12 taken for all purposes allowed under the Federal Court		12 indicates that before being listed as an expert you
13 Rules and the Federal Rules of Procedure.		13 require a \$4,000 retainer; is that correct?
14 Did somebody else just join the call, or		14 A. Yes, that is correct.
15 did I hear that wrong? Okay. Never mind.		15 Q. In those 50 or so cases in which you have reviewed
16 EXAMINATION		16 cases for the Fieger firm, did you receive that \$4,000
17 BY MR. O'LOUGHLIN:		17 retainer?
18 Q. Would you state your name, please?		18 A. Oh, yes.
19 A. Werner Spitz, S like Sam, P like Paul, I, T like Tom,		19 Q. For this deposition you required us, the Defendants,
20 Z like zebra.		20 to prepay \$2,500?
21 MR. O'LOUGHLIN: I didn't ask. Who is		21 A. Yes. I have received the usual fee of \$2,500 for this
22 there for the Plaintiff's Counsel?		22 deposition.
23 MR. DAWSON: I'm here. Don Dawson on		23 Q. Does that limit us to any particular time or apply to
24 behalf of Harrington. He couldn't make it.		24 any particular amount of time?
25		25 A. Well, it limits you to three hours.
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1 BY MR. O'LOUGHLIN:		1 Q. I didn't see that in the fee schedule, but that
2 Q. And Doctor, what is your profession?		2 shouldn't be a problem.
3 A. I'm a medical doctor, and I'm a forensic pathologist.		3 A. Okay.
4 Q. You have been listed as an expert for the Plaintiff in		4 Q. If we only take a half hour, do we get a refund?
5 this case, and I have a report from you that is dated		5 A. No, you don't. It says on the invoice that the fee is
6 April 15th, 2017. Do you have that report available		6 not refundable.
7 to you?		7 Q. What amount of income do you derive from acting as an
8 A. Yes, indeed, I do.		8 expert reviewer or witness per year?
9 Q. Can you estimate for me the numbers of times you have		9 A. Well, this is my profession. All my professional
10 acted as an expert reviewer or witness in a legal		10 income comes from my work as a forensic pathologist.
11 case?		11 That involves review, and it involves testimony when
12 A. Oh my God. I don't know. Many times. Over maybe		12 it happens. Many times it doesn't happen. I have
13 2,000 or 3,000. I have been doing this work -- I have		13 additional income, but that is from investments.
14 been a forensic pathologist for the last 64 years.		14 Q. I'm just asking about the amount of income from your
15 Q. Your date of birth is March 24th, 1959?		15 expert work either as a reviewer or witness in
16 A. I wish it was.		16 medical-legal cases.
17 Q. I'm sorry. I'm sorry. I was looking at the -- that		17 A. You mean you want an amount?
18 is very bad. Your date of birth is August 22, 1926?		18 Q. Yes, please.
19 A. You are correct.		19 A. No, I cannot give you that. The reason that I cannot
20 Q. Making you 91 years old?		20 give it to you is because my work -- my professional
21 A. That's correct.		21 work is jointly accomplished with my wife, and my wife
22 Q. Do you continue to actively practice?		22 is adamant about not releasing that amount.
23 A. Yes.		23 Q. All right. We will reserve that for the judge at the
24 Q. Of the 2,000 to 3,000 cases which you have acted as an		24 time of trial. How much would you have to be paid to
25 expert reviewer or witness, how many of those were for		25 dance naked on the table?

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1 A. I don't understand.		1 A. Yes, I do.
2 Q. Have you in the past testified that if you are paid		2 Q. Did you review the deposition testimony of Dr. Stark?
3 enough, you will dance naked on the table?		3 A. Yes, I did.
4 A. Well, you know, that was a stupid statement that I		4 Q. Pardon me?
5 made, but I was aggravated by the lawyer who was		5 A. Yes, I do have that deposition.
6 questioning me incessantly, but the main --		6 Q. Okay. We are talking deposition transcripts, not
7 unnecessarily. The main comment that I have to make		7 their written report? Although those were referred to
8 now about that comment that I made is that I have		8 and may have been included with the transcripts, you
9 never had an offer. So yes, I made the statement, but		9 actually reviewed their deposition testimony in this
10 I have never had anybody wanting to take me up on it.		10 case?
11 Q. We don't know your price.		11 A. Yes, I did.
12 A. Well, I'm pretty cheap.		12 Q. What else have you reviewed since April 15th, 2017?
13 Q. All right, Doctor. Going to your report of April		13 A. Well, like I said, Dr. Levine that I received
14 15th, 2017 in this case, you initially list the		14 yesterday, Dr. Levine, Dr. Landers, Dr. Stark, and
15 material you have reviewed. Do you have that in front		15 there is another one. I forgot which one that is.
16 of you?		16 Q. The pharmacologist, whatever he was,
17 A. Yes.		17 psychopharmacologist?
18 Q. Is that a list of all of the material you have		18 A. Yes. He has, I think, a Greek name. Komesaroff.
19 reviewed regarding this case?		19 Q. Okay. He has not yet been deposed, but you may have
20 A. No. There was some additional materials that I		20 his report?
21 received just a couple -- in fact, one of them I		21 A. I think I have his report, and I thought I had a
22 received a big, fat envelope just yesterday. But most		22 deposition.
23 of the material I received before I wrote this report.		23 Q. Well, if you do, I wasn't there.
24 Q. All right. I will try and break it down. As of the		24 A. Maybe I don't have that. But I do know that I
25 time you wrote this report are the items listed all of		25 reviewed something that is about a half inch or so in
Page 10		Page 12
1 the materials you have reviewed related to this case?		1 thickness given by Dr. Komesaroff. He is a professor
2 A. No. All the material that I listed on the front page		2 at a college as far as I know, or a university.
3 of the report were reviewed and used to write this		3 Q. What else have you reviewed? What other depositions
4 report. There were additional materials which came in		4 have you received?
5 as late as yesterday.		5 A. I received the deposition of Dr. Levine, of Dr. Stark,
6 Q. Correct. I may not have been clear in my question. I		6 of Dr. Landers. Those are all depositions that I
7 was trying to go back to the time you wrote this		7 received yesterday.
8 report and asking if at that time the materials listed		8 Q. Have you ever reviewed the depositions of any of the
9 here were all the materials you had related to this		9 healthcare providers involved in Mr. Dunigan's
10 case.		10 Emergency Department visit of May 6th, 2016?
11 A. Yes, that's correct. I did have all the materials		11 A. Yes, I did. I don't recall all their names, but I
12 listed that I reviewed available to me when I wrote		12 remember one, Shoemaker, and if you mention another
13 this report.		13 one, then I will know whether I reviewed this
14 Q. Did you have anything other than those materials		14 gentleman's as well.
15 available to you when you wrote this report?		15 Q. Mr. Shoemaker, I believe, was a security officer at
16 A. No.		16 Bronson. Was the other deposition you reviewed of
17 Q. Can you identify what material you have received since		17 another security officer?
18 April 15th, 2017?		18 A. Yes. I forgot his name.
19 A. There were expert opinions, expert depositions,		19 Q. Did you review depositions of any of the actual
20 including, those that I remember offhand without		20 healthcare providers from Bronson, emergency room
21 searching, Dr. Levine in San Diego, Dr. Landers, and		21 physician?
22 there were some others. There were at least two		22 A. Yes.
23 others. Do you want me to go look for them?		23 Q. Nurses, medical assistants?
24 Q. Do you have with you today everything that you have		24 A. Yes. There is a physician. I forgot his name. Let
25 reviewed related to this case?		25 me see. I don't find it here. I would have to go and

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1	get it and then tell you. If you want me to do that,	1	minute. These are statements made by Officer Shaffer
2	I will do that.	2	and Derek Nugent. Ernst, that is E-R-N-S-T, R. Von
3	Q. I really would like to know what it is you have had	3	Schwarz, M.D., Ph.D. -- M.D. Ph.D. Von Schwarz,
4	access to for --	4	S-C-H-W-A-R-Z. There are a number of e-mails. Do you
5	A. Let me go and look at what that is.	5	want those too, or do you want me to clear that with
6	Q. Please bring back all of the depositions you have	6	Counsel?
7	reviewed --	7	Q. Is there anything in those e-mails that you relied on
8	A. Okay.	8	to form your opinions?
9	Q. -- and any other material.	9	A. No. I didn't rely on that. But those are e-mails
10	A. Okay.	10	regarding scheduling and stuff like that with the
11	(Recess taken at 2:33 p.m.)		Fieger firm.
12	(Back on the record at 2:35 p.m.)		12 Q. No, I don't need those.
13	A. Gorda Dunigan.	13	A. And those are secretarial -- they were not even
14	BY MR. O'LOUGHLIN:	14	addressed to me. They are secretaries to secretaries.
15	Q. Doctor, just so the record is clear, you are now	15	There is one document here that is entitled Notice to
16	listing the names of witness' depositions you have	16	Produce Documents.
17	read?	17	Q. What document does it refer to?
18	A. Yes. Dr. Simpson. That is a doctor of education,	18	A. Let me see. Records, diaries and bills prepared in
19	Dr. Dennis Simpson, Nolan Cattell. I already	19	connection with this investigation and evaluation of
20	mentioned Charles Shoemaker.	20	the issues involved in this lawsuit.
21	Q. You did.	21	Q. Is that a notice for this deposition to ask you to
22	A. I think I already mentioned Gorda Dunigan.	22	produce those things?
23	Q. Yes, you did.	23	A. Let me see. Well, the witness is not described here,
24	A. Dr. Stark, Dr. Landers, Dr. Levine. I think that is	24	so I don't know if it is to me or not. There are
25	all. That's all the depositions. There are other	25	statements here. Allen VanderLaan, Kurt Benson,
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1	documents.	1	Cummings, McClorey, Davis and Acho. That's it.
2	Q. And I appreciate you doing that. Sorry it took as	2	Q. All right. That appears to be perhaps either a
3	long as it did. What other documents have you	3	Request for Production to the Plaintiff or from the
4	reviewed since the material you listed on April 15th,	4	Plaintiff to the Defendant, so I don't need that
5	2017?	5	either.
6	A. I have reviewed -- wait a minute. No, I'm sorry.	6	A. Okay.
7	That is not all the depositions. There are other	7	Q. I'm looking for any other material you have reviewed
8	depositions as well, only they are packaged a little	8	related to this case.
9	differently, and so I did not think that they were --	9	A. I will tell you. I have the Complaint. There is a
10	I did not remember that they were depositions. But	10	Complaint to each of the Defendants. So then there is
11	there are two big binders with depositions. Those	11	a document here, a discharge note from the ER. It
12	contain Dr. Regot, deposition of Kevin Patel,	12	doesn't say from whom this is, but that is somebody in
13	deposition of Ryan Szumski, that is S-Z-U-M-S-K-I,	13	the emergency room that discharged this patient. It's
14	deposition of Marianne Loudes, L-O-U-D-E-S, deposition	14	a discharge note suffice it to say. I don't know by
15	of Kimberly Gilbert, Shay, S-H-A-Y, deposition of	15	whom.
16	Brian Blair, deposition of Dennis Watson, deposition	16	Q. Is it discharge instructions?
17	of Amber Bishop, deposition of Christine Rohr,	17	A. No, it's not discharge instructions. It describes --
18	R-O-H-R, Antoura Farrell Dunigan, Farrell is	18	I will read to you the beginning of it, and then you
19	F-A-R-R-E-L-L, deposition of Lola Streeter, that's	19	will know. "Went out to assist Bronson Security
20	S-T-R-E-E-T-E-R, deposition of Steven Dunigan,	20	Officer Ripley and day shift Public Safety Officer
21	deposition of Quincy Lamar Dunigan, a deposition of	21	Nugent with a subject James Ronald Dunigan, who was
22	Detective Eric Shaffer, S-H-A-F-F-E-R, deposition of	22	refusing to leave the emergency room after being
23	officer Derek Nugent, N-U-G-E-N-T.	23	discharged. Mr. Dunigan had been cleared medically by
24	I think I have gotten to the end. Yes.	24	ER and wheeled out to the lobby around 4:27 a.m.
25	Oh, you wanted all of the documents. So hold on a	25	Apparently staff had told him he could wait until the

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1	busses started running. Security" --	1	there is another copy of the Complaint, a Complaint to
2	Q. All right. Doctor, I'm sorry to interrupt. I	2	another entity, another person, another Complaint. I
3	apologize. You don't need to read the whole thing.	3	think there are four such Complaints. There is
4	That appears to be a statement by the security officer	4	another medical record from Bronson Hospital, which is
5	or police officer.	5	an admitting record. The date of this record is the
6	A. Yes, that is what it is.	6	date in question, which is May 6th, 2016 at 2:13 at
7	Q. But let's continue trying to identify the material you	7	night, which is the date that Mr. Dunigan came to the
8	have reviewed.	8	emergency room.
9	A. Okay. I will tell you material that I reviewed.	9	There is another similar record, which is
10	There is an almost two-inch document of medical	10	labeled Incident/Investigation Report dated May 13th,
11	records from Bronson Hospital.	11	2016. This is subtitled Incident Information. The
12	Q. Records in addition to -- do those records include the	12	main title on the top is Incident/Investigation
13	Emergency Department visit of May 6th, 2016 or records	13	Report.
14	of prior care?	14	Q. Do you know by whom that report was created or by what
15	A. Let me see. These are old records. The date on the	15	entity that report was created?
16	top record is August 8th -- sorry, August 11th, it's	16	A. The report is the same format as other reports, and in
17	hard to make out, of the year 2009.	17	particular the Bronson Hospital record dated 5-6-2016
18	Q. Can you tell where those records are from? Are they	18	and with a time of 2:13, which I just read to you a
19	from Bronson?	19	minute ago. That is the record -- these two seem to
20	A. Bronson. Bronson Hospital.	20	be related because they look the same.
21	Q. All right. As you held them up, I saw what appeared	21	The first one, of course, as I stated, was
22	to be sticky notes, pink sticky notes?	22	the time 2:13 is when Mr. Dunigan came -- arrived at
23	A. Yes, they are sticky notes that my office manager put	23	the emergency room, at 2:13 at night. Then there is a
24	in.	24	record here, which is from -- which I think is a
25	Q. You did not put those in?	25	duplicate actually, from Ernst R. Von Schwarz, M.D.,
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1	A. No, I did not.	1	Ph.D. This one is dated December 31, 2017.
2	Q. Do you know what they designate?	2	In addition to these records there is an
3	A. No, I don't know what they designate specifically	3	autopsy report, which was compiled by Dr. Douglas, I
4	other than that they are old medical records.	4	think, Elizabeth Douglas, M.D. There is also a death
5	Q. Did you review those old medical records?	5	certificate and a toxicology report. This is the
6	A. I skimmed them. That's about it.	6	extent of the documents that I have except for the
7	Q. Did you review the depositions you have listed?	7	document that I generated, which is my opinion letter.
8	A. Most of them I have. Some of them I have skimmed just	8	Q. So you have now identified all of the material you
9	to make me acquainted with the fact that those are	9	have reviewed related to this case?
10	really not necessary for me to know in detail because	10	A. Yes.
11	I had already formulated my opinions. I had written a	11	Q. Aside from the report you prepared on April 15th, 2017
12	document about my main opinions. I supplemented my	12	that we have received, do you have any other notes or
13	information that I had from before by reading the	13	writings related to your review of this case?
14	depositions that came yesterday, and that's about it.	14	A. I do. But I hasten to in this regard because these
15	There is some documents that I thought I	15	are not opinion notes, but rather sections that I
16	need to review. Others I really did not need to	16	wanted to summarize from the records. So they are
17	review because there was duplicate information in	17	notes, all right, but they are not opinion notes. My
18	them. By skimming them the information that I would	18	opinions are rendered in the letter that I wrote to
19	be confronting is already covered in other depositions	19	Mr. Harrington on April 15th, 2017.
20	and documents. So I did not really continue to review	20	Q. How many pages of notes do you have?
21	those documents. I did not think that that was	21	A. Let me see. I don't know. Somewhere around ten or
22	necessary.	22	so. Maybe it's nine. That's it.
23	There is a record here from the ambulance	23	Q. Please assemble all of the pages of the notes you have
24	crew, which is listed -- which is labeled pre-hospital	24	and hand them to the court reporter to be marked as an
25	care report summary. That is dated 01-17-2016. Then	25	exhibit.

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1 A. Okay.	MARKED BY THE REPORTER:	1 A. Not necessarily that he wanted, but I have my own
2	3 DEPOSITION EXHIBIT 1	2 method of writing opinions. So most of my opinions
3	4 3:10 p.m.	3 are very similar, depending on the case of course. So
4	5 BY MR. O'LOUGHLIN:	4 I write the opinion accordingly. Usually it
6	7 Q. Has it been marked?	5 answers -- the opinions would answer anybody's request
7	8 A. It has been marked, and this is Exhibit Number 1.	6 for review and opinion. Many times I don't even know
8	9 Q. Is Exhibit Number 1 then collectively the pages of all	7 these lawyers, but the opinions are usually very
9	10 of the notes you have made related to this case?	8 similar in that they would answer the majority of
10	11 A. Yes. There is one letter on the top of -- I didn't	9 inquiries.
11	12 separate a letter from Mr. Harrington's paralegal,	10 Q. Did you understand, either from being directly asked
12	13 Devon Barry. That letter is appended to five yellow	11 or from your routine, based upon the many cases you
13	14 pages, lined yellow pages, which are my notes.	12 have had with the Fieger firm in the past, did you
14	15 Q. Thank you.	13 understand whether you were being asked to comment in
15	16 A. There is additional yellow pages, which are also part	14 any way on the quality of care provided?
16	17 of this package that we marked just now, but those are	15 Q. A. No. The quality of care I don't usually tackle that
17	18 not -- they are loose. They are not attached to the	16 because I am not an emergency physician, and I'm a
18	19 Fieger office letter.	17 forensic pathologist, so I do not address standard of
19	20 Q. But they are part of Exhibit 1?	18 care. Although there are some issues here in this
20	21 A. They are part of Exhibit 1. Am I correct? Yes, I am	19 case that I, as a person, not as an expert even, but
21	22 correct.	20 as a person, I took exception to the way that this
22	23 Q. I would like those to be kept together and arranged	21 individual was handled. He was not handled like I
23	24 for copies to be made to be attached to the	22 would want to be handled or like anybody in my family
24	25 transcript.	23 should be handled. So I told him that. But I don't
25	A. Okay.	24 know if I wrote it in my opinion.
		25 I haven't reviewed my opinion in some time,
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1 Q. When you were contacted regarding this case, what were	1 but I don't believe that Mr. Dunigan, with his	
2 you asked to do?	2 underlying condition that he had at the time the	
3 A. I was asked to, like I normally do, determine the	3 police came and took him to the jail, that they	
4 cause of death, determine to see if there was	4 handled him correctly. I would not want to be handled	
5 conscious pain and suffering, and I'm saying I wasn't	5 that way.	
6 specifically instructed to do this or that because	6 Q. Okay. Let's sort a few things out. You have agreed	
7 that is the way that Fieger's office sends me files.	7 that you are not an emergency medicine physician,	
8 I have worked with them a fairly large number of	8 correct?	
9 times, so I should know what they need. So I address	9 A. No, that is correct.	
10 those issues. Those are addressed in my report.	10 Q. And not an expert in emergency medicine, correct?	
11 Q. So what are those things that you know the Fieger firm	11 A. No, I'm not an expert in emergency medicine, but I'm a	
12 needs when it sends you a file, a record?	12 physician who knows certain things that occurred here.	
13 A. Well, they want to know the cause of death. They want	13 And under those circumstances this individual did	
14 to know whether this individual had conscious pain and	14 not belong in jail, belonged to the hospital, and he	
15 suffering, whether the death certificate is correctly	15 was not allowed to stay in the hospital. He was not	
16 issued, whether the manner of death is correct and	16 even admitted.	
17 various -- yes, that's about it.	17 So all of these things together, and then	
18 Then if they have other questions, they	18 on top of that, taken to the hospital, yes, I know	
19 call me, and they say well, you didn't include such	19 that he asked to be taken to the hospital, but what	
20 and such, and then I may add it or I may not add it,	20 does he know about what needs to be admitted and what	
21 depending on what is the question that they ask me.	21 really his underlying condition is. He didn't know	
22 But I've known Jim Harrington for a long time, and I	22 that. Mr. Dunigan had no idea what he is suffering.	
23 know what he wants usually.	23 So when I take all that together, I did not	
24 Q. Have you now listed those things that you understood	24 like the -- as a physician, not as an expert forensic	
25 he wanted?	25 pathologist, but as a physician, I did not like the	

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1	way this man was handled, this man was treated, this	1	really very little connected to him falling out of a
2	man was confronting when he was handled by a number of	2	bus when he sustained the fall and hit something on
3	people who were not necessarily treating him like a	3	cement, as he indicated.
4	patient, not like -- and like a sick patient, like a	4	It was a different kind of chest pain
5	patient who was in the throes of death. They did not	5	altogether, and that chest pain is notorious for
6	recognize it, and they should have recognized it.	6	fearing doom. That pain is a different kind of pain.
7	That is my opinion.	7	That is the pain of a heart attack.
8	Q. You don't claim to be an expert in emergency medicine,	8	Q. Upon what do you base that statement?
9	correct?	9	A. On the fact that he had manifestations of congestive
10	A. No, I'm not an emergency medicine physician.	10	heart failure. His breathing, his sickening type of
11	Q. You don't claim to be an expert in emergency nursing,	11	snoring that is not that he is sleeping, but it is a
12	correct?	12	kind of snoring, if you will, where fluids in the lung
13	A. No, that is correct.	13	go up and down the airway every breath he takes. That
14	Q. You don't claim to be an expert in radiology, correct?	14	is not necessarily annoying for others to hear. That
15	A. Correct.	15	is not the issue. The issue is that it scared the
16	Q. You don't claim to be an expert in hospital security,	16	daylights out of the individual who suffers it.
17	correct?	17	It is a type of pain is associated with
18	A. Correct.	18	asphyxiation. Asphyxiation is always a very fearful
19	Q. You don't claim to be an expert in law enforcement or	19	experience because here the lung contains fluid. When
20	the conduct of law enforcement officers, correct?	20	the fluid is moved by breathing up and down, there is
21	A. Correct.	21	in addition to the noise that this makes, there is
22	Q. Do you claim to be an expert in the law known as	22	also a lack of air in the lungs substituted for
23	EMTALA, the Emergency Medical Treatment and Active	23	fluids, so-called edema fluids, which is none other
24	Labor Act?	24	than froth.
25	A. Yes, I'm aware of such a thing, but I have not ever	25	And the officers looked at all that, stated
	Page 26		Page 28
1	made use of that type of information. So I know of	1	it in their packing him into the seat in the police
2	it, but I really don't know a whole lot of it.	2	vehicle, did nothing about it. They said: Oh, he is
3	Q. When you say you haven't made use of it, that means	3	faking. Oh, we know well what to expect from him, and
4	you haven't had to worry about complying with EMTALA?	4	so on and so forth. The officers know or should know
5	A. Or not complying. I don't know enough about EMTALA to	5	what that means. I know they are not physicians, but
6	know how to handle that. I don't see patients in my	6	they should know that because it occurs a lot more
7	practice.	7	often than we want.
8	Q. Correct. What is your understanding of why	8	Q. Doctor, if we can, for the sake of addressing
9	Mr. Dunigan came to the Emergency Department in the	9	different periods of time, break this ED presentation
10	early morning hours of May 6th, 2016?	10	down into the period of time from when Mr. Dunigan was
11	A. Well, he had chest pain he claims, and he came because	11	picked up by the ambulance to the time that he was
12	it was for him a fearful experience. That is what	12	discharged from the Emergency Department into the
13	took him to the hospital. He, in fact, was in a	13	waiting room, when he was wheeled into the waiting
14	condition which in his mind required transport to the	14	room in a wheelchair. Do you understand that frame of
15	hospital, like you said, in the middle of the	15	time I'm talking about?
16	nighttime, and it was a fearful experience for him, so	16	A. Well, it's kind of a long question which requires
17	he called for an ambulance to take him.	17	probably a long answer, but I hope I will comply with
18	Q. What is your understanding of how long he had had this	18	your request. If I don't, so please tell me.
19	chest pain?	19	Q. Let me go back and get some foundation. Did you
20	A. He indicates that, as a layperson, I have to say that,	20	review the videos that you received as listed in your
21	he says that -- or he thought there is a connection	21	report?
22	between his chest pain and the bruise he had on his	22	A. Yes, I did review that. I reviewed the videos. To
23	chest and his actual pain, that that resulted from	23	answer your question, I would like to state that the
24	internal bleeding he thought, and that he -- chest	24	video clearly shows, or one of them, clearly shows a
25	pain from -- the real reason for the chest pain was	25	restful -- I mean a restless individual who aimlessly

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1	walks around because he is experiencing -- well, for	1	evaluated and discharged from the Emergency
2	lack of a better term, he is experiencing the sense	2	Department?
3	that he is no longer for this world. He is experiencing	3	A. Yes. I'm fully aware of that, but I don't necessarily
4	pain that elicits in him the thought that he will soon	4	agree with that handling either.
5	die. He hears himself breathe. He knows how he	5	Q. All I'm trying to get here, Doctor, is to a timeframe
6	feels. He has acute chest pain of the type that is	6	so that we can ask questions. What I'm talking about
7	horrible. People are driven to hospitals all the time	7	is the timeframe up to the time that Mr. Dunigan is
8	when they experience this kind of pain.	8	discharged from the Emergency Department and into the
9	So that is what the video clearly shows.	9	waiting room. My question is do you understand the
10	Then the video shows him in the way he was handled	10	timeframe I'm talking about?
11	when they put him out on the curb because they decided	11	A. Yes, I understand fully. From 2:13 when he arrived
12	in the hospital that he has to leave the hospital. So	12	until 4:30.
13	they gave an order to the police safety people, to the	13	Q. Okay. Thank you. From the time he was picked up by
14	police officers that worked for the hospital, to take	14	the ambulance until the time he is discharged to the
15	him out of there. That was not very nice of them	15	waiting room, are you aware of any evidence that he
16	either.	16	exhibited any clinical signs or symptoms of I will
17	Although they gave him permission to stay	17	start with a myocardial infarction?
18	until 6:00, it wasn't until 6:30 that -- or close to	18	A. I don't know whether I can answer that because there
19	6:30 that he was actually placed on the curb to fend	19	really is no medical information that would have
20	for himself. Police came and took him off from the	20	allowed me to make that kind of statement to answer
21	hospital, and there is a video which shows how he is	21	your question. An x-ray to determine whether he has
22	handled when he is put in the vehicle. He is pushed	22	got broken ribs and then they find no broken ribs and
23	into the vehicle. He is falling over. They pull him	23	make a diagnosis that there is nothing wrong with him,
24	and shove him and treat him like an object, not like a	24	so they discharged him, that is not the way to do it.
25	person.	25	My objection is that I, without necessarily
	Page 30		Page 32
1	He is heard by me breathing this terrible	1	dealing with the standard of care, because I don't
2	snoring sound. He at the same time he is -- a comment	2	know what the standard of care is, but as a physician,
3	is made by officers that he is foaming at the mouth.	3	I can tell you that I don't want to be handled that
4	Well, you know, as a physician, not as an emergency	4	way. Neither do I want anybody else to be handled
5	physician, but as a physician who has been taught over	5	that way. They did nothing for this individual. They
6	and again that this kind of thing is not long. This	6	did nothing in the emergency room, and they should
7	type of thing is ending in death of this patient.	7	have done something for him. That something may even
8	How does he die? He dies of suffocation.	8	have extended his life.
9	That is a horrible type of death. That is what I saw.	9	Q. Doctor, if you could listen to my question and try
10	That I hope answers your question.	10	just to answer the question rather than giving
11	Q. Not even close, Doctor. My question was did you	11	speeches. I will tell you right now that I will
12	review the videos, yes or no?	12	object to paying you one dime if we go beyond three
13	A. Yes, I did.	13	hours because of the length of your answers, and I
14	Q. Thank you. I will move to strike all of the other	14	will be happy to present that to Court.
15	information you just tried to convey.	15	A. Okay.
16	A. Okay.	16	Q. Now, my question was are you aware of any evidence
17	Q. Do I have your permission to interrupt you in the	17	that Mr. Dunigan exhibited any clinical signs or
18	future when you go way off course and go beyond the	18	symptoms of an MI, a heart attack, up to the time he
19	question I'm asking?	19	was discharged from the Emergency Department into the
20	A. Of course.	20	waiting room?
21	Q. All right. Did you review the videos from the Bronson	21	A. Yes. He complained of pain, of chest pain. That is
22	waiting room?	22	all he could complain about. In addition to that
23	A. Yes.	23	there is some evidence of him having swollen legs. In
24	Q. Did you understand that what was depicted in those	24	addition to that he had difficulty breathing. So all
25	videos was a period of time after Mr. Dunigan had been	25	this points to at least excluding --

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1	(Telephone connection cut out at 3:35 p.m.)	1 Emergency Department and wheeled into the waiting
2	(Back on the record at 3:39 p.m.)	2 room, did he have any signs or symptoms of a heart
3	BY MR. O'LOUGHLIN:	3 attack? Your answer started as "no." If that is the
4	Q. I can tell you that I lost you after my last question	4 answer, I will take it. If you know the signs and
5	from the time you said "chest pain." So I don't have	5 symptoms, I want to know about those.
6	any idea what you said after that or if the court	6 A. Well, he had chest pain. That was his complaint when
7	reporter took it down. We will try to resume if I	7 he came in.
8	may.	8 Q. Any potential sign or symptom of a heart attack other
9	A. Well, maybe that is all as well that you lost it.	9 than that?
10	Q. It probably is all as well, but thank you. If I may,	10 A. That is a sign of a heart attack unless proven
11	I don't want the answer read back because it looked	11 otherwise.
12	like you were talking for a really long time after	12 Q. Anything other than chest pain which you would
13	that question. So if I may, I would like to ask it	13 consider a sign or symptom of a heart attack that he
14	again. Is that acceptable?	14 presented up to the time he was discharged to the
15	A. Sure.	15 waiting room?
16	Q. I am talking about the time period from the time	16 A. I do not see any mention in the record of the
17	Mr. Dunigan was picked up by the ambulance to the time	17 emergency room that would talk about manifestations of
18	he was discharged from the Emergency Department and	18 a heart attack because I must think from the lack of
19	wheeled into the waiting room. Can you point to	19 mentioning any other manifestations, which in my
20	evidence of any clinical signs or symptoms of a heart	20 opinion don't have to be there, but at least -- I
21	attack that he exhibited?	21 don't know that they even tried to find anything else.
22	A. None really as indicated in the emergency room records	22 There are things that can be done with
23	that permits me to quote them at this time. When such	23 somebody who has chest pain with a history of a heart
24	a situation arises, it should -- there are situations	24 condition that would at least need -- call for doing
25	where it's a matter of ruling out. Not every	25 something that would confirm or dismiss the thought of
Page 34		Page 36
1	condition is manifested by symptoms. But chest pain	1 a heart attack.
2	in a 57 year old individual with a history of -- he	2 Q. Aside from the complaint of chest pain as reflected in
3	had a history, a long history, from the hospital where	3 the medical record from the Emergency Department, did
4	he is known to have hypertension and diabetes and all	4 Mr. Dunigan exhibit any signs or symptoms of a heart
5	these conditions that he had. They knew that. They	5 attack up to the time he was wheeled into the waiting
6	had this on record.	6 room?
7	So it's a matter of saying wait a minute,	7 A. No, I'm not aware of any direct manifestations of a
8	this individual has been here for years and been	8 heart attack, but they don't have to be there. So I
9	coming here to get medical care. So why don't we look	9 mean I don't know how else to answer that. If
10	this up on the computer. If they would have done	10 everybody had other manifestations that without any
11	that, they would have known his background. That was	11 doubt confirm a heart attack other than a pathologist,
12	never done. Instead, they took an x-ray and sent him	12 the -- what ever happened to Troponin to do that, to
13	to the curb.	13 find out if he has got manifestations of a heart
14	Actually, they allowed him to stay until	14 attack? I don't know how to answer that any
15	6:00 when the busses go. So he sat there, but he is	15 differently.
16	obviously on the video that I saw, he is --	16 Q. How about answering it straight, Doctor. You have
17	Q. Doctor, you gave me permission earlier when you went	17 given thousands of depositions. Please just try to
18	way beyond the question --	18 answer my question without the speeches. What do you
19	A. Okay.	19 consider to be a clinical sign or symptom of a heart
20	Q. Now, my question -- do you remember my question?	20 attack?
21	A. What did he do between 2:13 -- or what happened	21 A. Laboratory work.
22	between 2:13 and 4:30. That is your question. Am I	22 Q. You consider laboratory work to be a clinical sign or
23	correct?	23 symptom?
24	Q. My question is from the time he was picked up by the	24 A. Yes. That is done in the clinic when somebody comes
25	ambulance to the time he was discharged from the	25 in a condition that could be related to a heart

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<p>1 attack. That should be used, and that is called for a 2 laboratory.</p> <p>3 Q. Okay. I guess we should remember that you are not a 4 clinician, true?</p> <p>5 A. No, I'm not a clinician.</p> <p>6 Q. Okay. This is unbelievable. Are you aware that every 7 day all across the country thousands of people present 8 to Emergency Departments with complaints of chest 9 pain?</p> <p>10 MR. DAWSON: Objection, foundation.</p> <p>11 A. I'm sure that is true.</p> <p>12 MR. DAWSON: Go ahead, Doctor.</p> <p>13 A. I'm sure that that is true.</p> <p>14 BY MR. O'LOUGHLIN:</p> <p>15 Q. Are you aware of the fact that the vast majority of 16 those patients do not have chest pain due to a heart 17 attack?</p> <p>18 MR. DAWSON: Objection, foundation. Go 19 ahead, Doctor.</p> <p>20 A. That is not my consideration, whether they have or 21 don't have. It is -- it requires that everything be 22 done in the interest of the patient with the chest 23 pain at the right age that that patient could have a 24 heart attack, and therefore, it has to be ruled out.</p> <p>25</p>	<p>Page 37</p> <p>1 in the wheelchair is when you see video of him in the 2 waiting room, true?</p> <p>3 A. Yes.</p> <p>4 Q. Up to that point are you aware of any evidence 5 indicating that his condition deteriorated or got 6 worse up to that time from the time he got to the 7 hospital?</p> <p>8 A. No, I don't see that in the emergency room there was 9 evidence that he got worse in the emergency room.</p> <p>10 Q. With that same end point, up to the time that he was 11 rolled into the waiting room after being discharged 12 from the Emergency Department are you aware of any 13 evidence that he had any sort of breathing difficulty 14 or respiratory difficulty?</p> <p>15 A. There is no mention of any of that. The heart attack 16 could have occurred with little or no manifestations. 17 So that clinically a heart attack would not -- would 18 may well be there but needs to be explored whether 19 it's there or not because heart attacks can be very 20 subtle in onset.</p> <p>21 So if you don't make an effort to find it, 22 you are not going to know that it's there or not. He 23 did not -- other than chest pain, severe chest pain, 24 such that it was fearful for him to have that chest 25 pain, and the negative x-ray on top of it, that</p>
<p>1 BY MR. O'LOUGHLIN:</p> <p>2 Q. Okay. Are you aware of any evidence, based upon your 3 thorough review of all these materials, that 4 Mr. Dunigan's condition in any way deteriorated up to 5 the time that he was discharged from the Emergency 6 Department and wheeled into the waiting room?</p> <p>7 A. I don't know what that means. Could you ask me that 8 differently, please?</p> <p>9 Q. Are you aware of any evidence, based upon your review, 10 that Mr. Dunigan's condition deteriorated or got worse 11 up to the time that he was wheeled into the waiting 12 room?</p> <p>13 MR. DAWSON: After he was discharged from 14 care?</p> <p>15 MR. O'LOUGHLIN: Correct.</p> <p>16 MR. DAWSON: There you go, Doctor.</p> <p>17 MR. O'LOUGHLIN: But before he is wheeled 18 into the waiting room or up to that time.</p> <p>19 BY MR. O'LOUGHLIN:</p> <p>20 Q. Do you understand my question, Doctor?</p> <p>21 A. Not really. No, I don't. He was discharged from the 22 emergency room to the waiting room like around 4:30.</p> <p>23 Q. Let me just -- I'm still trying to set the stage. I 24 can't believe it's this hard.</p> <p>25 After he is discharged to the waiting room</p>	<p>Page 38</p> <p>1 creates a problem if you are not going to continue 2 looking for what may be the source of the pain when 3 nothing that would show up on x-ray is actually there.</p> <p>4 Q. You agree that the chest x-ray was negative?</p> <p>5 A. The chest x-ray was negative. There was no evidence 6 of broken ribs. There was no evidence of bruised 7 lungs. There was no evidence of any positive 8 manifestation that would warrant that kind of chest 9 pain.</p> <p>10 Q. What was thought to be -- based upon your review, what 11 was thought to be the cause of Mr. Dunigan's chest 12 pain?</p> <p>13 A. He had chest pain because he had 99 percent occlusion 14 of two major coronary arteries.</p> <p>15 Q. Maybe you misunderstood my question. Let me make it 16 clear. From your review of the record and the reason 17 Mr. Dunigan came to the hospital and the conclusion 18 reached by the healthcare providers in the Emergency 19 Department, what is your understanding of what was 20 thought to be the cause of his chest pain?</p> <p>21 A. I have to believe that they thought that he fell out 22 of the bus and bruised himself.</p> <p>23 Q. Which is exactly what he reported, true?</p> <p>24 A. Which is what he reported, yes. Otherwise, they 25 wouldn't have known. Otherwise, they wouldn't have</p>

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1	taken the x-ray.	1	timeframe from when he was picked up by the ambulance
2	Q. And from your close review of the records, did you	2	on May 6th to the time he was discharged from the
3	discern that on examination that chest pain was	3	Emergency Department and wheeled into the waiting room
4	reproducible with palpation?	4	on May 6th. Do you have an opinion as to what was
5	A. You mean that if they pushed with their hand on his	5	thought to be -- I'm sorry -- do you have any evidence
6	chest that it became worse?	6	that you can point to that indicates Mr. Dunigan
7	Q. In the area where the patient was complaining, yes.	7	complained of chest pain with exertion?
8	A. Yes. I understand that. I'm not surprised of that.	8	A. Whether he had chest pain on exertion or not, he has
9	But at the same time, it was the chest pain that got	9	evidence in the records where they know that he is
10	worse by exertion.	10	diabetic, where they know that he is hypertensive,
11	Q. Upon what do you base that claim?	11	where they know that he has got some other time chest
12	A. Because the record does show that.	12	pain on exertion. All these things add up. Then he
13	Q. Where do you see anywhere in the record that it says	13	has -- somewhere I read that he had had swollen ankles
14	this pain was worse with exertion?	14	as well.
15	A. Well, I don't know where I saw it right now, but	15	Q. I didn't understand what you said there.
16	somewhere in the records it mentions chest pain	16	A. I said that somewhere I noticed that he had on that
17	getting worse from exertion.	17	day he had swollen ankles, and he is a patient of
18	Q. Well, you better dig out the record.	18	diabetes, and they --
19	A. No, I can't do that now. That is just too much work	19	Q. Doctor, I'm going to interrupt you again. Do you
20	to do that now.	20	recall my question?
21	Q. It's not a long record.	21	A. Yes, I know your question. But I need to point out to
22	A. Because I need to read the record from the beginning.	22	you that there is a previous number of records at that
23	Let me see what I can come up with. This record is	23	very same hospital. So they knew of his condition or
24	Bronson emergency room record. The middle of the	24	should have known.
25	page. I don't know what number. Here, page 2, it	25	Q. Do you recall my question?
	Page 42		Page 44
1	says chest pain on exertion. It's about five inches	1	A. Yes.
2	from the top.	2	Q. Any evidence that Mr. Dunigan complained of chest pain
3	Q. Are you familiar with how you read Emergency	3	with exertion at any time on that day, May 6th, 2016,
4	Department records?	4	at any time?
5	A. I read them. I mean I know how to read English. It	5	A. No, I'm not aware.
6	says chest pain on exertion.	6	Q. Thank you. Based upon your review, would you agree
7	Q. Right. Do you believe that applies to a past history	7	that the healthcare professionals caring for
8	as opposed to what he presented on this occasion?	8	Mr. Dunigan believed that his chest pain was due to
9	A. This is a record of -- let me see.	9	the fall he reported when he got off the bus and fell
10	Q. Let me try as hard as I can to try to shorten it up.	10	at 6:00 p.m. the evening before?
11	Do you see a date associated with that complaint?	11	A. No, I don't agree with that.
12	A. I see it is -- well, there are several dates. Maybe	12	Q. You think the healthcare providers thought his chest
13	not. Yes, there are several dates.	13	pain was caused by something else?
14	Q. 2012 and 2014?	14	A. I think that they thought it was caused by something
15	A. Yes.	15	else because they did not eliminate anything else in a
16	Q. Do you believe that that reference suggests that he	16	patient with the underlying record that he has.
17	had chest pain with exertion at the time he presented	17	Q. Based upon your review -- can you point me to any
18	to the Emergency Department on May 6th, 2016?	18	evidence which would indicate that any of the
19	A. Well, it may be. I don't know. I'm not clear about	19	healthcare professionals involved with Mr. Dunigan's
20	whether it was on -- these were the dates when he had	20	care actually thought that his chest pain was due to
21	chest pain on exertion, and that would have -- should	21	something other than the fall he had suffered?
22	have raised a red flag for any time that if you have	22	A. I cannot crawl into their minds, but I can tell you
23	chest pain on exertion, at any other time that means	23	that no effort was made to find out what really caused
24	the coronary arteries are in bad shape.	24	his chest pain.
25	Q. My question, again, I attempted to talk about the	25	Q. Can you, based upon your review, identify any evidence

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1	that Mr. Dunigan's condition was unstable at the time	1	I gleaned from the records.
2	he was discharged from the Emergency Department?	2	But it doesn't make any difference whether
3	A. Evidence there was not that he was unstable. But if	3	this was the day or not because he got -- he had to
4	they had explored, they would have found out that it	4	have dialysis in order to clear his blood of the waste
5	was unstable.	5	product that it normally has if he does not get
6	Q. Is the answer to my question that you are not aware of	6	dialysis.
7	any evidence indicating that Mr. Dunigan's condition	7	His life expectancy was governed by his
8	was unstable as of the time he was discharged from the	8	kidneys and probably to some extent of his heart as
9	Emergency Department to the waiting room?	9	well and diabetes and so on and so forth. But that is
10	A. Well, he was unstable even -- I mean you could argue	10	not -- I disagree, by the way, with the comment made
11	that he was unstable because of the way he behaved in	11	on the death certificate that the drugs that he took
12	the waiting room once he was discharged from the	12	were a contributing factor to his death. I don't
13	emergency room. He was totally anxious. He was	13	believe that.
14	walking around with his cane. He was holding on to	14	Q. Doctor, do you think you are capable of answering the
15	furniture and seats and his cane to walk around. Let	15	questions I ask?
16	me think of the word I am looking for. Yes, he was	16	A. I answer you the best I can.
17	anxious. He was concerned. He was worried about his	17	Q. Here is my question: Have you done any research or
18	condition because the pain was not related to -- they	18	reading which would allow you to offer an opinion as
19	ruled out -- the x-ray ruled out that he had any major	19	to the average life expectancy of a patient in end
20	condition in his chest. Even a broken rib was not	20	stage renal failure requiring dialysis?
21	found. Nothing was found that would indicate that he	21	A. Between five and seven years.
22	had chest pain because of an injury.	22	Q. Upon what do you base that opinion?
23	Q. Do you believe that one can experience chest pain from	23	A. On the statistics.
24	a fall without breaking a rib?	24	Q. From where?
25	A. Of course you can, but here you have a patient who has	25	A. I don't know from where to tell you right now, but I
	Page 46		Page 48
1	a record of heart conditions, cardiovascular	1	can always research where that comes from. But I have
2	conditions, COPD, he is known to have diabetes, known	2	known that for a long time. There are documents
3	to have manifestations on other occasions that point	3	issued by the life insurance companies, the major life
4	to his heart and breathing organs, like lungs and	4	insurance companies, and the CDC that gives you these
5	chest wall and so on. They knew what they are dealing	5	kinds of estimates.
6	with, but did they make use of that knowledge? No,	6	Q. You have referred to statistics from life insurance
7	they did not.	7	companies in your report, correct?
8	Q. Did you do any research or online search or reading in	8	A. That's correct.
9	order to prepare your opinions and provide your	9	Q. You suggested that, based upon those statistics,
10	opinions in this case?	10	someone of Mr. Dunigan's age could expect to live
11	A. I did a lot of reading. Not for this case, but I	11	another 23 years?
12	started my reading when I went to medical school.	12	A. Yes. With compliance he stands the chance of that
13	Q. Have you done any research specifically for your	13	kind of longevity. He was not always compliant.
14	review and providing opinions in this case?	14	Q. How do you reconcile the opinion you just gave, that a
15	A. No, not providing for this case, but providing for all	15	person with end stage renal disease on dialysis has a
16	kinds of other cases that have similar problems.	16	life expectancy of five to seven years, with your
17	Q. Have you done any reading or research as to the life	17	suggestion that Mr. Dunigan had a life expectancy of
18	expectancy of a patient with end stage renal disease	18	23 years?
19	on dialysis?	19	A. No. Well, first of all, when I wrote that, I was not
20	A. Well, I do a lot of autopsies on these patients, so I	20	aware that he was not always compliant. That is one
21	get their records. The life expectancy of a dialysis	21	factor at least. So I also did not know much about
22	patient is about seven years. This individual was on	22	his general medical conditions. But I know now, and
23	dialysis. In fact, I think that, if I'm not mistaken,	23	that is why I'm saying with compliance he probably
24	this visit to the emergency room on May 6th was a	24	stands a much better chance than the average person.
25	Friday. So he got dialysis on Fridays. That is what	25	Q. Okay. Let me ask this: The average life expectancy

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1 of patients in end stage renal disease on dialysis	1 A. Not quite.	
2 doesn't mean necessarily patients who are compliant or	2 Q. All right.	
3 noncompliant, true?	3 A. In every -- is that a question? Because then I can	
4 A. No. I'm assuming that he was not always compliant.	4 answer.	
5 That is what I know. What that assumes in regards to	5 Q. Didn't you already tell me that a patient with end	
6 Mr. Dunigan I really don't know.	6 stage renal failure on dialysis has an average life	
7 Q. Is it fair to say you don't really know what his life	7 expectancy of five to seven years?	
8 expectancy would have been?	8 A. Yes, I did.	
9 A. No, I don't say that. I say that the average life	9 Q. All right. Didn't Mr. Dunigan have end stage renal	
10 expectancy may be five to seven years, but what was	10 disease and required dialysis?	
11 Mr. Dunigan's life expectancy requires some more	11 A. Yes, he required dialysis or transplant.	
12 inquiry. I don't know what it means that he was not	12 Q. That five- to seven-year life expectancy with patients	
13 always compliant. If he was compliant or not	13 on dialysis doesn't only apply to patients who are	
14 compliant, I would assume that the conditions	14 noncompliant, does it?	
15 indicated on the death certificate have been with him	15 A. I don't know what that is based on other than the	
16 for years, and so when I read that and when I read the	16 statistics indicate that the life expectancy of	
17 comments on the death certificate with regards to	17 individuals on dialysis, three times a week dialysis,	
18 drugs, I tend to believe that he had a much better	18 would have on the average a life expectancy of five to	
19 life expectancy than is maybe assumed at face value.	19 seven years.	
20 Q. First of all, you would withdraw the opinion in your	20 Q. Okay. Mr. Dunigan was a patient with end stage renal	
21 report of April 15th, 2017 that Mr. Dunigan was	21 disease requiring dialysis three times a week, true?	
22 deprived of at least 23 years of life. You no longer	22 A. I think it is. Usually it is three times a week	
23 hold that opinion, true?	23 because when the kidneys are shot like in this case,	
24 A. No, that is not really true. I don't know if it's in	24 then he would need dialysis three times a week.	
25 the 20-year level that his life expectancy would have	25 Q. So isn't he the kind of patient, based on statistics,	
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1 been, but that may require some more research. But	1 that would be considered to have a five-to seven-year	
2 only the future really would really tell whether it	2 life expectancy?	
3 was or was even an extent of that. But for right now	3 A. Not necessarily.	
4 I think I would consider that the life expectancy may	4 Q. Why not?	
5 have been as high as 23 years, but may not have been.	5 A. Well, how do I know? Maybe next week something comes	
6 I would like to know that he improved his lifestyle.	6 out where he can get a transplant. How do I know	
7 I would like to know that he is under medical	7 that? And why not? Why is he not eligible for a	
8 supervision, compliant as it is, and I would then make	8 transplant? A lot of kidneys floating around these	
9 my opinion as to the veracity of that statement in my	9 days.	
10 report.	10 Q. Do you know whether that average life expectancy of	
11 Q. But we don't have the benefit of knowing what would	11 five to seven years with patients in end stage renal	
12 have happened in the future if he lived, do we?	12 disease includes the whole range of patients from	
13 A. Well, I don't know what would have been -- what would	13 patients who are noncompliant to patients who get a	
14 have occurred if he had lived, but I'm not surprised	14 transplant?	
15 that he died because nothing was done for this	15 A. No, no, no. That is not so. I'm aware of patients	
16 individual.	16 with transplanted kidneys who do very well, very well	
17 Q. When you attempt to -- and you do believe you are	17 indeed.	
18 qualified to offer opinions on life expectancy?	18 Q. But the average overall of a patient like Mr. Dunigan,	
19 A. Oh, yes, I am.	19 a patient in end stage renal failure requiring	
20 Q. Okay. In every case where you are offering that	20 dialysis, is five to seven years according to your	
21 opinion in a death case, the patient is already dead.	21 opinion. It's actually shorter than that, but --	
22 You have to rely upon statistics and studies and	22 A. No. My opinion is perfectly fine to consider the life	
23 reviews of past cases to determine the likely time a	23 expectancy in Mr. Dunigan, sorry, in this individual,	
24 patient would be expected to live beyond their actual	24 is based on the maximum that he is likely to live,	
25 date of death, true?	25 considering all his conditions, not just the kidneys.	

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1	The kidneys are one item here, and the	1 A. Yes.
2	necessity of dialysis is not a given in anybody.	2 Q. Are you aware of any evidence indicating that he still
3	There are a lot of people who now get kidneys who	3 had obvious manifestations of serious illness --
4	never even thought of the likelihood that they might	4 A. He had --
5	get one. They are able to get kidneys. So I think	5 Q. -- referred to in your report?
6	that the likelihood of an individual like this is not	6 A. I have answered that. I have answered that before. I
7	necessarily carved in rock that he would not qualify.	7 am unaware of him having other conditions because
8	I don't know that. So if he qualifies, he stands a	8 nothing else was done to find out if he had other
9	chance, and that would eliminate dialysis.	9 conditions except that the record in the record room
10	Dialysis is not a nontraumatic event. So	10 is full of them, and nobody ever pulled them and
11	dialysis has its own perils, and if he does not need	11 studied them and knew what they say.
12	dialysis, he is way ahead.	12 Q. Are you aware of any evidence that Mr. Dunigan
13	Q. So did you or did you not testify multiple times so	13 demonstrated any frothing at the mouth at any time
14	far today that on average a patient with end stage	14 before he was placed in the police vehicle?
15	renal disease on dialysis has a life expectancy of	15 A. No, I'm not aware of it, that he was frothing at the
16	five to seven years?	16 mouth at the hospital, but he sure was frothing at the
17	A. That may be, but that goes for each and every case	17 mouth in the vehicle because I heard it. Frothing at
18	separately. It's not uniform for all of them.	18 the mouth and snoring, that type of snoring which I
19	Q. But you attempt to decide on life expectancy by taking	19 can only hope I never hear again.
20	those statistical averages and applying them to a	20 Q. Please try and listen to my question, Doctor. At any
21	particular patient, true?	21 time before Mr. Dunigan is placed in the police
22	A. When the circumstantial evidence causes me to do that,	22 vehicle are you aware of any evidence indicating that
23	I do. When it doesn't, I do that too. That is why my	23 he had frothing at the mouth or was experiencing air
24	testimony is what it is.	24 hunger, difficulty breathing or dyspnea?
25	Q. That five- to seven-year average life expectancy you	25 A. No. I said that. I said that I'm unaware of it, if
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1	referred to could be reduced by other comorbidities	1 he had it before he left.
2	other than end stage renal disease, true?	2 Q. Are you aware of any evidence indicating that at any
3	A. Well, it obviously did in this case, but it didn't	3 time after his initial presentation to the Emergency
4	have to.	4 Department Mr. Dunigan ever asked for any medical care
5	Q. So that five- to seven-year average that you are	5 or medical attention?
6	talking about would be reduced even further if a	6 A. Before what?
7	patient also had diabetes and coronary artery disease?	7 Q. At any time after his initial presentation.
8	A. He has had diabetes for a long time. He has had	8 A. You mean on 5-6-2016 at 2:13? That is when he came to
9	coronary artery for a long time. He had COPD for a	9 the hospital.
10	long time. He had hypertension for a long time. Does	10 Q. Let me try it this way: Let's go from the time he was
11	that mean that he has to die necessarily without	11 discharged from the Emergency Department and wheeled
12	affording him the best possible medical treatment that	12 into the waiting room. Do you understand where I am
13	America can provide? Because that could be me. Maybe	13 in the time sequence there?
14	I shouldn't say me, but that could be I.	14 A. Well, I don't know that he asked for medical care, but
15	Q. Up to the time that Mr. Dunigan was wheeled into the	15 he didn't want to leave. That is for sure. He
16	waiting room are you aware of any evidence that he had	16 certainly didn't want to leave the hospital. Why he
17	an obvious manifestation of serious illness or that he	17 didn't want to leave I can only speculate. I don't
18	was foaming at the mouth or that he was experiencing	18 know why he didn't want to leave, but it's obvious
19	pulmonary edema or that he was having air hunger,	19 that if you don't want to leave the hospital, you are
20	difficulty breathing, dyspnea or fear of doom?	20 looking for more medical care, but maybe I'm wrong.
21	A. I'm sorry. I don't know -- I'm losing track of the	21 Q. Upon what do you base the claim you just made, that
22	question. Would you be so kind to say it again?	22 Mr. Dunigan did not want to leave the hospital?
23	Q. I'm still on the time period up to the time he is	23 A. Well, the records all show that. He didn't want to
24	discharged from the Emergency Department to the	24 go. He didn't want to be taken elsewhere. He asked
25	waiting room.	25 to be taken -- I don't know why he wanted to go to

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1	jail, but maybe he had hopes that they would provide	1	at Bronson saw Mr. Dunigan in a condition that
2	him with more medical care. I don't know. He did not	2	indicated he needed medical attention after he was
3	want to leave Bronson because that is abundantly	3	discharged to the waiting room?
4	documented in the various depositions that I read.	4	A. No, I'm not aware.
5	Q. Are you aware of any evidence indicating that	5	Q. Thank you. What is your understanding of
6	Mr. Dunigan ever complained of a medical problem or	6	Mr. Dunigan's ability to ambulate prior to the time he
7	asked for medical care after he was wheeled into the	7	fell getting off the bus on May 5th?
8	waiting room?	8	A. I don't know what his walking -- I have no idea what
9	A. I'm unaware whether he asked for additional medical	9	his condition caused him to -- by way of ability to
10	care. Maybe he didn't know that there was such	10	walk. I can't imagine that it did anything other
11	available, but it's obvious that that is what he	11	than -- the heart condition that he had is likely to
12	needed. Many times in my -- to my knowledge, patients	12	have caused him pain from walking, from exerting, from
13	don't know that they can get medical care for whatever	13	being exerted. But I don't know where I would have
14	they have, an ailment or a condition. They may not	14	found that, that what happened on the day before, on
15	know. He may not have known that he should -- he has	15	the day before he went to Bronson. But stress is not
16	to ask for medical care. I really don't know that.	16	exactly a good thing for somebody with that kind of
17	But the fact is that he wasn't given that	17	heart condition that Mr. Dunigan had.
18	choice. He wasn't asked to come back in the room, in	18	Q. Based upon your review of everything you have seen in
19	the emergency room. When he was seen walking around	19	this case are you aware that Mr. Dunigan had a history
20	aimlessly holding on to furniture, obviously something	20	of a stroke with hemiparesis?
21	is wrong with this man. So as a doctor, you would	21	A. He had some difficulty walking because of that stroke
22	kind of frown that somebody, a nurse or a health	22	because one side was weaker than the other, but
23	provider, would not point out to the physician in the	23	whether they really interfered with his ability to
24	emergency room or other personnel that there is	24	walk with a cane I am not aware.
25	something wrong with that patient that should be	25	Q. We are back to that. You don't know what his ability
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1	explored. But nothing like that ever happened. The	1	was to walk or ambulate with or without a cane prior
2	one thing that was done was an x-ray, which excluded	2	to May 6th, 2016, true?
3	trauma.	3	A. No. I think with a cane he was able to walk. Maybe
4	Q. I'm becoming convinced that you are not capable of	4	not as well as he did before he had the stroke, but he
5	answering my questions, Doctor. But I'm just going to	5	walked with a cane, or was able to walk with a cane.
6	keep asking them.	6	I can see him walk in the waiting room.
7	A. Go ahead.	7	Q. Do you know whether he was able to walk any better
8	Q. I'm going to have to ask the same one again. Are you	8	than he was when you saw him in the waiting room on
9	aware of any evidence indicating that Mr. Dunigan ever	9	the day before?
10	asked for any type of medical care after he went to	10	A. I don't know how he was walking the day before, but in
11	the waiting room?	11	general he was able to walk. He was able to walk even
12	A. I've already answered that. I said no, I'm not.	12	on May 6th because that is when I saw him.
13	Q. Thank you. Please stop there. Are you aware of any	13	Q. Did you say was or wasn't?
14	evidence that any physician or nurse saw any behavior	14	A. Was. He was walking okay. He was walking. He was
15	in Mr. Dunigan which indicated that he needed medical	15	holding on to furniture, but that is explainable by
16	attention?	16	his condition on that day, because on the 6th he was
17	A. Any nurse?	17	different than on -- he may have been different than
18	MR. DAWSON: After he was discharged from	18	on May 5th.
19	the ED?	19	Q. You don't know one way or the other, true?
20	MR. O'LOUGHLIN: Correct.	20	A. I know how he behaved on May 6th. I'm not so sure
21	MR. DAWSON: Go ahead, Doctor.	21	whether that applies to May 5th as well.
22	A. Any nurse at Bronson or any doctor at Bronson, or am I	22	Q. That is the point of my question, Doctor. Do you know
23	included in that too, because I saw him.	23	whether his ability to ambulate as you saw it on May
24	BY MR. O'LOUGHLIN:	24	6th in the waiting room was any different than his
25	Q. Are you aware of any evidence that any nurse or doctor	25	ability to ambulate on May 5th before he fell getting

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1	off the bus?	1	life expectancy.
2	A. I just said that I do not know.	2	Q. Okay. Let's talk about my question, which if you will
3	Q. All right. Thank you. In your report you claim that	3	recall, was specifically up to the time he was in the
4	Mr. Dunigan was discharged from the ER at 4:30 a.m.	4	police vehicle. Do you recall that?
5	and that he was still in severe pain with obvious	5	A. Well, I interpreted that to mean --
6	manifestations of serious illness.	6	Q. Do you recall that or not?
7	A. Yes.	7	A. I interpreted that question to mean in the police
8	Q. What are you referring to in that claim as obvious	8	vehicle.
9	manifestations of serious illness or an indication	9	Q. Okay. So when I said between the time he was wheeled
10	that he was still in severe pain?	10	into the waiting room up to the time he was placed in
11	A. Well, his breathing, his froth, his behavior when he	11	the police vehicle, you thought that included the time
12	was trying to lie down and they didn't let him. They	12	after he was placed in the police vehicle?
13	wanted him to sit up, and he couldn't maintain	13	A. Not after, but in the police vehicle.
14	balance. All these things clearly indicate that he	14	Q. All right. Now, let me try and specify the parameters
15	was not in a very good health condition.	15	so we can get a straight answer. From the time
16	Q. You saw some difficulty breathing while he was in the	16	Mr. Dunigan was wheeled into the waiting room after
17	waiting room?	17	being discharged from the Emergency Department up
18	A. He didn't snore for nothing. That is a difficulty	18	until the time he is placed in the police car, but not
19	breathing. That is fluid, edema fluid, going up and	19	including the time after he is placed in the police
20	down in his airways.	20	car, are you aware of any evidence that he exhibited
21	Q. Are you now referring to the time when he was in the	21	severe pain or obvious manifestations of a serious
22	police vehicle?	22	illness?
23	A. That is what you asked.	23	A. Well, yes, I am. I mean why would somebody in the
24	Q. No. I asked in the waiting room.	24	room -- in the waiting room walk around holding on to
25	A. Well, that was not my impression.	25	the chairs and benches and using his cane? Why would
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1	Q. That period of time. Let's go from the time that he	1	they do that if they are in such good health? So
2	is wheeled into the waiting room until the time he is	2	having said that, he obviously had something happening
3	in the police vehicle. Are you aware of any	3	to him that was not indicative of great health at that
4	indication that he was still in severe pain or had	4	time. So that is really all I can tell you.
5	obvious manifestations of a serious illness?	5	Otherwise, I did not see him or hear him
6	A. In the waiting room I did not hear him snore like	6	breathe. I did not see or hear him have foam around
7	that, although he may have. I did not hear it. In	7	his mouth. But I base my opinion on his demeanor in
8	the police vehicle I heard it personally. So	8	the waiting room where he was anxious, did not sit
9	therefore, I'm fully aware that he was in a state of	9	down in spite of pain that he had because he came
10	air hunger at that time. Air hunger is horrible. Air	10	there with pain. Nothing was done to alleviate pain.
11	hunger is equivalent to fear of doom and fear of	11	So therefore, he still had it.
12	death.	12	Q. Is it fair to say that the only evidence you can point
13	So having said that, the rest of the	13	to indicating that Mr. Dunigan was still in severe
14	behavior in the police car where he couldn't sit up	14	pain or had obvious manifestations of a serious
15	but constantly fell to the side where he would lie	15	illness is what you saw on the video from the waiting
16	down, but they didn't let him, they sat him up by	16	room?
17	force. So that is also a manifestation of severe	17	A. What happened in the waiting room is what I saw on the
18	illness because normally people sit. They don't lie	18	pictures of what he did in the waiting room.
19	down in a vehicle unless they are in some condition	19	Q. All right. What you just said, I believe, was that
20	that makes it imperative that they lie down.	20	the only evidence you can point to to support that
21	And then the foam at the mouth that the	21	claim is the way he was moving around the waiting
22	police officer who saw it, I did not personally see	22	room?
23	it, but he pointed to my attention of froth at the	23	A. He was moving around. He was walking. He was trying
24	mouth when he said so. So I can only put all this	24	to walk with a cane. He was holding on to the
25	under one umbrella, and that means bad health, short	25	furniture. He was trying to lie down at some time and

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1	then got up suddenly again and moved around again. He	1	somebody in distress. So in a hospital, in a medical
2	was anxious. That is what he was. That is called	2	environment, is it likely that somebody may have seen
3	exertion. That is called stress. That is called	3	him? Well, I don't know how likely it is, but people
4	agitation. That is called an underlying health	4	walk around, nurses, healthcare personnel. So chances
5	condition.	5	are, more likely than not, that somebody would have
6	Q. Did you earlier testify that you didn't know whether	6	seen him. His doctor that he saw at 2:13 was also
7	the way that Mr. Dunigan moved around the waiting room	7	around. Other than that, I cannot answer that. That
8	was any different than the way he moved the day	8	is my answer.
9	before?	9	Q. Well, okay. The paragraph I read referred to 4:30
10	A. I don't know how he moved the day before. I'm saying	10	after he was discharged to the waiting room. Did you
11	that again. But how he moved in the waiting room is	11	understand that?
12	clearly indicated on the pictures, on the video.	12	A. After he was discharged from the waiting room all I
13	Q. It is. It is. Is there anything about the way he	13	have is what the police tell me, and then there was
14	moved that you can say would be different if he had	14	also some pictures that I saw which depict
15	been in the waiting room the day before, before he	15	Mr. Dunigan, but were they enough for me to make a
16	fell from the bus?	16	diagnosis? No. So I'm not even referring to those
17	A. I don't know what your question is, sir. I'm sorry,	17	pictures.
18	but I don't understand your questions. They are a	18	But the fact is that there were police
19	little bit convoluted for me.	19	around. They also were aware about what he was doing
20	Q. Okay. Let's try one that is not. You have in your	20	and not believing him and all this is fake and so on.
21	report, first paragraph, second page, "Despite	21	Q. Doctor, all right. After he was discharged from the
22	Mr. Dunigan's appearance and complaints of pain and	22	waiting room and before he was placed in the police
23	his worsening condition," and again, that is the	23	car are you aware of any evidence indicating that he
24	paragraph that refers to 4:30, after he was discharged	24	complained of pain?
25	to the waiting room. What evidence do you have that	25	A. I don't know if he complained. I didn't hear him.
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1	Mr. Dunigan ever complained of pain after he was	1	All I know is what I can substantiate, and what I can
2	discharged to the waiting room?	2	substantiate I already said several times.
3	A. I don't know. Maybe he did have. Maybe he didn't. I	3	Q. Would you put something in your report that you could
4	don't know. I don't know the answer.	4	not substantiate?
5	Q. Why did you put it in your report?	5	A. I put something in my report that I could not
6	A. Well, what did I put in the report? Could you read me	6	substantiate? Is that what your question is?
7	what I put?	7	Q. Yes. Would you?
8	Q. Yes. You have, "At about 4:30 a.m. Dunigan was	8	A. I don't know. What I put in my report is clearly
9	discharged from the ER and waited in the lobby at the	9	written down and in black and white, so --
10	hospital still in severe pain and obvious	10	Q. What you put in your report was that, "Despite
11	manifestations of serious illness. Despite Dunigan's	11	Mr. Dunigan's appearance and complaints of pain and
12	appearance and complaints of pain and his worsening	12	his worsening condition Bronson personnel approved his
13	condition, Bronson personnel approved his release from	13	release from the hospital."
14	the hospital."	14	What I'm trying to find out is whether you
15	A. He came to the hospital with pain, with severe pain,	15	have any evidence indicating that he complained of
16	in an ambulance. Nothing was ever done with him to	16	pain at any time after he was wheeled to the waiting
17	alleviate that pain. So why would there suddenly be	17	room.
18	no pain? When he walks around in the waiting room, he	18	A. That is obvious that he complained of pain because he
19	is walking with difficulty. He is holding on to the	19	came to the hospital because of it. That is why he
20	furniture. He is walking with a cane. He is trying	20	summoned an ambulance. Did he not tell the ambulance
21	to lie down. He gets up after a minute or two and	21	why he is going to the hospital and not to the movies?
22	walks around again. He is anxious. He is worried.	22	Q. Apparently you didn't hear my question. Let me try it
23	He is in a state of stress at that time. So whether	23	again. I'm talking about the time period after he was
24	he complained to anybody, I have no idea.	24	discharged from the Emergency Department to the
25	But people watch like I do, and they see	25	waiting room, which is the time referred to in your

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1	paragraph that starts, "At about 4:30." Do you	1 indicated that he had a medical problem?
2	understand the timeframe I'm talking about?	2 MR. DAWSON: Objection, form of the
3	A. After 4:30. Is that what you are -- after 4:30.	3 question. When?
4	Q. Are you aware of any evidence that Mr. Dunigan ever	4 A. I'm not aware of that statement in relationship to
5	complained of pain or a worsening condition after	5 that visit on May 6th.
6	4:30?	6 BY MR. O'LOUGHLIN:
7	A. No, I'm not. I'm not aware that he complained to the	7 Q. If that was the testimony of the security officers and
8	police, because they are the ones that were outside	8 the police officers, are you aware of any evidence
9	with him, that he complained to them about pain. But	9 that would contradict their testimony that Mr. Dunigan
10	I think that that would have fallen on deaf ears if he	10 never indicated he had a medical problem?
11	did. They are the ones who charged him with faking to	11 A. No, I'm not aware.
12	begin with.	12 Q. If they also testified that Mr. Dunigan never asked
13	Q. Do you hear my question?	13 for medical care or asked to be seen by any healthcare
14	A. Yes, I hear your question.	14 provider after the time he was discharged to the
15	Q. Then please answer it.	15 waiting room, would you be able to point to any
16	A. I told you that I have no knowledge. I would not talk	16 evidence that would contradict that testimony?
17	to the police either because they are the ones that	17 A. Yes, I think I would, because he started snoring and
18	ran him into the ground. They are the ones that	18 frothing at the mouth as soon as he was put in the
19	claimed that he was faking, and that occurred in fact	19 police vehicle. The pulmonary edema did not just
20	all the time.	20 suddenly occur. The pulmonary edema took time to
21	Q. Are you aware of any evidence indicating that any	21 develop. The frothing needed time to mix air with
22	Bronson security officer or other Bronson employee or	22 fluid as a result of breathing, so that took time as
23	any police officer didn't think that Mr. Dunigan was	23 well. How much time? Fairly long time. All this
24	faking?	24 must have, by necessity, have started before he even
25	A. I don't know. I did not talk to them about it. I am	25 went into the vehicle. This did not just suddenly
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1	aware that that is their conversation among each	1 develop out of the blue. Consequently, it is one
2	other. That is what I heard.	2 thing to lie down, which already is visible on the
3	Q. I think I got this, but I will tell you it's getting	3 video in the waiting room. Why should it now be
4	hard to tell. At any time up until Mr. Dunigan was	4 different? So it didn't suddenly disappear.
5	placed in the police car are you aware of any evidence	5 Therefore, it had to go on.
6	that he was experiencing air hunger, difficulty	6 Q. Let's try my question. If the security officers and
7	breathing, dyspnea or fear of doom?	7 police officers testified that Mr. Dunigan never asked
8	A. Yes, that is my opinion. That is correct. Nothing	8 for medical care, never asked to be seen by a
9	was done for Mr. Dunigan from 2:13 until -- or to	9 healthcare professional, are you aware of any evidence
10	alleviate pain and stress and fear. Nothing was done	10 contraindicating that testimony?
11	except an x-ray was done, which did nothing.	11 A. No, he may not have. He may not have. I answered
12	Q. What evidence up to the time Mr. Dunigan was placed in	12 that before too. He may not have because he
13	the police car are you aware of that indicated he was	13 doesn't -- he doesn't need some more comments about
14	having difficulty breathing, air hunger, dyspnea or	14 oh, I know about him faking. I know about that. I
15	fear of doom?	15 have seen that well before many times.
16	A. His behavior in the waiting room.	16 When you hear that kind of comment, you
17	Q. What about that behavior indicated any of those	17 don't want to talk to those people.
18	things?	18 Q. I'm just going to keep asking, Doctor, because you
19	A. I have already said that, and I think that the time	19 seem incapable of --
20	will come when I will not say it again. I have said	20 A. I told you before I did not hear that. I wasn't
21	it now I don't know how many times. I really refuse	21 present at the time that he was in the emergency room,
22	to answer that again, so please ask me another	22 in the waiting room, on the curb, in the police car.
23	question.	23 I wasn't there. I'm basing my opinion only on what I
24	Q. Did you read in testimony from the security officers	24 read. What I read is not very complimentary to the
25	and the police their statements that Mr. Dunigan never	25 police and to the hospital.

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1 Q.	And what you have read and reviewed and everything you	1 indicates that a myocardial infarct is likely to be in
2 know about this case does not allow you to point to	2 the making. By the way, the left anterior descending	
3 any evidence indicating that Mr. Dunigan ever asked	3 coronary artery is also called the widow maker.	
4 for any medical care or attention after the time he	4 Q.	
5 was wheeled to the waiting room, true?	5 That's cute too. Did I ask anything about that,	
6 A. He never asked. He may have talked to the doctor who	6 Doctor? Just let me ask my question, please. After	
7 saw him in the emergency room because he had to tell	7 hours what microscopic changes of a myocardial	
8 him something. He would have asked him why are you	8 A. Myocardial fibers being -- beginning to be necrotic,	
9 here. Then he would have told them. So we know that.	9 and you may expect some neutrophils to be scattered	
10 I forgot the name of that doctor. It's an M.D.	10 around the same area.	
11 physician who saw him in the emergency room and who	11 Q. Does this autopsy report indicate such findings?	
12 gave a deposition. Other than that I don't know	12 A. No, it does not. I told you it requires hours for	
13 anything. I only base my opinions on the evidence	13 that to occur.	
14 that I read.	14 Q. Hours of what, hours of infarction?	
15 MR. O'LOUGHLIN: If you would read back my	15 A. Hours of a clock.	
16 question, please.	16 Q. Do you have any knowledge that would tell you whether	
17 (The requested portion of the record was	17 a patient can have ischemic chest pain for more than	
18 read by the reporter at 5:00 p.m.)	18 an hour and not have infarction?	
19 "Q. And what you have read and reviewed	19 A. Say that again.	
20 and everything you know about this case	20 Q. Are you aware, based upon your medical knowledge, that	
21 does not allow you to point to any evidence	21 if a patient has ischemic chest pain for more than an	
22 indicating that Mr. Dunigan ever asked for	22 hour, that, by definition, has to result in	
23 any medical care or attention after the	23 infarction?	
24 time he was wheeled to the waiting room,	24 A. No, that is not true.	
25 true?"	25 Q. How many hours does it take for contraction band	
Page 74		Page 76
1 A.	Yes, I have answered that. I have answered it that I	1 necrosis and neutrophils, as you referred to, to
2 did not hear it, but I wouldn't talk to those people	2 appear on autopsy?	
3 that you indicated or asked me about whether I heard	3 A. How long it takes for a myocardial infarct to be	
4 him talk to them. I would not be surprised if he	4 identifiable microscopically? Is that your question?	
5 didn't tell them anything.	5 Q. I will start with that. Sure.	
6 BY MR. O'LOUGHLIN:	6 A. Several hours. Four or five hours.	
7 Q.	7 Q. Which is it? Several or four or five?	
8 At autopsy, the postmortem examinations, are there	8 A. Well, sometimes it takes four. Sometimes it takes	
9 findings which would be indicative of a recent	9 five. Sometimes it takes five and-a-half, and	
myocardial infarction?	10 sometimes it takes three and-a-half. So it doesn't	
10 A.	11 always do the same thing, but the average in my	
11 Yes. Well, no, there is not a myocardial infarction	12 personal experience is four to five hours.	
12 per se because myocardial infarctions take hours to be	13 Q. Are you aware that upon presentation to the Emergency	
13 manifested even under the microscope. So there are	14 Department Mr. Dunigan had a history of chest pain for	
14 manifestations of 99 percent occlusions, stenosis, of	15 eight hours?	
15 Q.	16 A. He may have had 25 hours, but he may not have had a	
16 Are there findings on microscopic postmortem	17 myocardial infarct at the instant of the pain	
17 examinations of the heart muscle that are indicative	18 starting. Lots of people have bad coronary arteries	
18 of a recent myocardial infarction?	19 and never develop a myocardial infarct. But the	
19 A.	20 coronary arteries supply the heart muscle with blood,	
20 I would prefer if I could answer that question after I	21 cause the arrhythmia and death.	
21 have reviewed the microscopic slides, but I have not.	22 Q. And Mr. Dunigan was at risk for an arrhythmia and a	
22 The answer to that question I gave you before where I	23 sudden cardiac death at any time, including even the	
23 said it requires hours for a myocardial infarction to	24 day before he was seen in the Emergency Department,	
24 make microscopic manifestations to allow	25 true?	
25 identification of a myocardial infarct. But the 99		
percent stenosis of the passage in two major coronary		
arteries indicates a very lousy blood flow, which		

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1 A. Mr. Dunigan was at risk for myocardial infarct for	2 years to have the changes that he had with scars and	1 where she says cocaine or even BE in that list of the	2 illegal drugs.
3 fibrosis in the heart muscle, but he didn't die until	4 he came to the emergency room on the 6th -- on May	3 Q. First of all, are you aware that Mr. Dunigan gave a	4 history of using marijuana and cocaine 14 times a
5 6th, 2016.	6th, 2016.	5 week?	5
6 Q. By the way, are you critical in any way of the manner	7 of performance or the conclusions reached in the	6 A. I'm aware of that, sir, but I'm talking about the	7 death certificate. That is another question that you
8 autopsy report of Dr. Douglas?	9	8 asked me now. My answer to that is that is not what I	9 referred to originally. I am unaware of there being
10 A. No. I never gave that a thought. It's an autopsy	11 report. I don't take this with a grain of salt. I do	10 any illegal drug in his system in that list of drugs	11 on the death certificate.
12 certificate, but that is not the autopsy report. You	13 didn't ask that.	12 Q. To your knowledge, did Mr. Dunigan have any	13 prescription for opiates?
14 Q. But I am now asking about your opinion of the autopsy	15 report, which I believe is the only thing you have	14 A. I don't know if he did or not, but my not knowing is	15 that Hydrocodone is a prescription medication. But
16 expert qualifications to comment on.	17	16 it's not illegal. It must not be illegal.	17
18 MR. DAWSON: Well, let me object to your	19 commentary. Why don't you just ask a question?	18 Q. Do you know whether Mr. Dunigan had a prescription for	19 any medication that would leave cocaine metabolites in
20 A. I take exception to that comment of yours because I	21 wrote about, what, 60,000, maybe 70,000 death	20 A. I don't know. He probably did not, but I don't know	21 if he did or not. He may have had cocaine. Maybe
22 BY MR. O'LOUGHLIN:	23 certificates myself. Do you think I can do that?	22 somebody slipped it to him. But BE is a metabolite,	23 not a drug. It's a metabolite of cocaine.
24 Q. My question is as to the autopsy report in this case.	25 Do you have any criticisms of the manner in which the	24 Q. Do you know whether Mr. Dunigan had a prescription for	25 Fentanyl?
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1 A. I don't really take any exception with the -- I don't	2 have any quarrel with the autopsy report.	1 A. I don't know, but it's a prescription medication.	2
3 Q. What is your quarrel with what is on the death	4 certificate?	2 Q. But if he took it and he didn't have a prescription	3 for it, that would be illegal, true?
5 A. On the death certificate she puts that two minutes of	6 interval between the onset and the manifestations,	4 A. You know, I don't know where he got it, so am I going	5 to make him an addict of Fentanyl just because he
7 that is one thing, for each and every diagnosis. Then	8 she puts there is illegal drugs in the blood of	6 could have taken it without a prescription?	7
9 Mr. Dunigan, and that is really unsupportable because	10 there is no illegal drugs. Which drugs are those?	8 Q. Why do you have qualms with the fact that the death	9 certificate says that he has illegal drugs in his
11 Q. I'm not sure I understand your opinion. Are you	12 claiming that Mr. Dunigan did not have illegal drugs	10 A. Because they are legal.	10 system?
13 in his system?	14 A. Any other disagreements with the death certificate or	11 Q. Any other disagreements with the death certificate or	11 the autopsy report?
14 A. I'm not aware of. Which are the illegal drugs?	15 Q. Did he have metabolites of cocaine?	12 A. No. Maybe I should read the death certificate a few	12 more times. I don't know. I don't think so.
16 A. That is not a drug now. That is a metabolite. You	17 don't go to the pharmacy and ask for BE or	13 A. May I ask you how much longer you are going	13 benzoylecgonine. I wonder what they are going to give
18	19 you.	14 Q. I think I will pass the witness. If you want to take	14 a break, we can do that.
20 Q. You don't dispute that Mr. Dunigan was a drug abuser,	21 do you?	15 A. No. I would like to finish the deposition. That is	15 important to me, but that is up to you to tell me that
22 A. I don't go into all that research, sir. I'm saying	23 there is no illegal drug in his system.	16 Q. you are done. If you say you pass the witness, that	16 tells me that you are finished.
24 Q. I'm sorry, Doctor. First of all --	25	17 A. MR. DAWSON: There is another lawyer,	17
25 A. Among the illegal drugs she does not -- I don't see		18 Doctor.	18

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1 BY MR. O'LOUGHLIN:		1 time all day, but I disagree with that --
2 Q. That means the other attorney here gets to ask you		2 Q. Tell me again --
3 some questions.		3 A. -- because I cherish life. I love life. I would like
4 A. Okay.		4 to be in a position where, because of all the people
5 EXAMINATION		5 that I have followed to the good Lord, I would like to
6 BY MR. VANDERLAAN:		6 be allowed to be put in for an extension when my time
7 Q. Dr. Spitz, my name is Allan VanderLaan. I simply want		7 comes. Having said that, thank you very much.
8 to concentrate on one aspect of your report. You		8 Q. I respect your opinion, Doctor. But tell me, based
9 indicate in the third paragraph, the second page -- I		9 upon your expertise, what allows you to make that
10 don't think you have your report with you. Let me		10 particular statement, that there is no -- there can be
11 read it. "There can be no greater pain than the fear		11 no greater pain than the fear of imminent death?
12 of imminent death."		12 A. Because of my profession, because of my religion,
13 Would you agree with me that that is a		13 because of my being the happiest person in the world
14 personal opinion as opposed to an expert one?		14 when I wake up in the morning and I see the sunrise,
15 A. No, I don't agree with you.		15 especially yesterday because it was a magnificent view
16 Q. Would you agree with me that reasonable experts could		16 out of my bedroom window over the lake. I'm telling
17 disagree on that statement?		17 you it was a sight to behold.
18 A. I don't know what reasonable experts do, but I can		18 As long as I am around -- I'm 91 years old.
19 tell you that you only die one time. If you don't --		19 I enjoy every minute. So is it just as good to die?
20 Q. Doctor, Doctor, stop. We want to get out of here.		20 No, sir, it is not.
21 Just stop. Would you agree with me that there are a		21 Q. Doctor, how would that -- how would that disagree with
22 number of psychologists or psychiatrists or religious		22 my reasonable position that, based upon my profession,
23 scholars that would disagree with that statement, that		23 my religion, my getting up in the morning and looking
24 there can be no greater pain than the fear of imminent		24 at a beautiful sunrise and saying to the good Lord I
25 death?		25 don't fear death? Why wouldn't that be reasonable?
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1 A. I don't know what these people believe. I have no		1 A. Well, because the opposite is much, much better.
2 idea. So I can tell you that this guy here that is		2 Q. That would be an opinion of yours, correct?
3 sitting and giving this deposition does not agree with		3 A. That is why I wrote that in the opinion. I wrote it
4 those people who think that dying is a pleasure.		4 in other opinions too because that is my conviction.
5 Q. Doctor, if this fellow here speaking were to tell you		5 Q. That is your conviction based upon your personal
6 that based upon his religious faith, that he would		6 belief system?
7 absolutely disagree that there is no greater pain than		7 A. That is my personal belief and my professional belief
8 the fear of imminent death because his faith system		8 too because there really is no difference between my
9 allows him to believe that there is something beyond		9 professional belief and my personal belief. I believe
10 that, so he has no fear, which I don't, of imminent		10 what I practice.
11 death, would you view that as an unreasonable		11 Q. As do I, Doctor. We can both be reasonable people and
12 position?		12 happen to disagree on that point?
13 A. Yes. I disagree with you. I disagree with you, and I		13 A. Okay.
14 think you are arguing with me, but that is up to you.		14 Q. You are not saying physical pain, correct? You are
15 Q. I'm not arguing with you. If I were to tell you,		15 talking about emotional?
16 Doctor, I have no fear of imminent death, only because		16 A. I'm talking about all pain, all pain.
17 of the religious faith that I have, would you tell me		17 Q. That statement --
18 that I was absolutely wrong and that I do have a fear		18 A. All pain.
19 of death?		19 Q. Doctor, thank you. I wish you well.
20 A. No, I'm not going to argue that. I'm not going to		20 A. Thank you.
21 answer that. We live in a free country. You can		21 Q. It's been an honor to ask you questions, sir. I'm
22 think what you want, and I think what I want.		22 done.
23 Q. In which case would you agree with me that my position		23 MR. O'LOUGHLIN: I'm going to have a couple
24 would be just as reasonable as yours?		24 more, Don. Do you have any?
25 A. I don't argue that. You can have your opinions any		25 MR. DAWSON: I have a couple. I will be

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1	very brief.		1 didn't want to catch the bus. The police came and
2	EXAMINATION		2 took him, and then he was pronounced dead at 7:40.
3	BY MR. DAWSON:		3 I'm not sure if that is exactly an hour and three
4	Q. Doctor, during the multiple years that you have been a	4 quarters, but somewhere around there.	5 Q. And again, I'm having trouble. I'm having trouble
5	physician have you talked to other colleagues who have		6 figuring out what period of time you are talking
6	actually been at the bedside with patients who have		7 about. Are you talking about the time after he was
7	died and learned of the fear of death that patients		8 outside the waiting room?
8	have expressed?		9 A. He was out in the street from -- let me see. I think
9	A. Have I talked to other colleagues --		10 somewhere around 6:15 or something like that. I don't
10	Q. Yes, sir.		11 know the exact time because there are different times
11	A. Who did what?		12 mentioned, but --
12	Q. Were at the bedside of people who were dying and saw		13 Q. Let's talk about what you saw that indicated to you
13	their pain.		14 that Mr. Dunigan was starting to have this utmost pain
14	A. Oh, absolutely. I have talked to lots of people like		15 and the fear of imminent death.
15	that. I have talked to lots of people who have tried		16 A. He was in a state of building up large quantities of
16	to commit suicide and were unsuccessful and are		17 edema in the lungs. His lungs weighed like close to
17	delighted to have not succeeded.		18 2,000 ml. I think the combined weight of both lungs
18	Q. And talked about their fear of death?		19 was 19 -- around 1,900 grams. That is approximately
19	A. Talked about their fear of death.		20 900 or 950 grams per lung. That is approximately
20	Q. Are those all bases for your statement that people do		21 three times normal of what these lungs weighed. It
21	have a great fear of imminent death?		22 takes time for that to occur. Now he has to breathe
22	A. There are people who are petrified at the thought of		23 and breathe hard to mix that fluid with air. That is
23	dying.		24 what causes foam. That is like drowning in your own
24	Q. That's all I have, Doctor?		25 fluids. That is asphyxiation like drowning without
25			
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1	RE-EXAMINATION		1 being even close to the water. That is a most painful
2	BY MR. O'LOUGHLIN:		2 type of death.
3	Q. Doctor, just a couple more. In that paragraph		3 Q. Okay. I think the only part of that answer that was
4	Mr. VanderLaan was referring you to also, after you		4 responsive to my question was the "that takes time"
5	talk about the fear of doom and the utmost pain and		5 part in terms of the fluid in the lungs. How much
6	there can be no greater pain than the fear of imminent		6 time does that take?
7	death, you state in your report, "James Dunigan		7 A. Well, it takes quite a while. I cannot tell you
8	experienced this type of conscious pain and suffering		8 exactly how long because I don't know when it started
9	for a duration of at least one and three quarters		9 here. But to have the lungs weigh three times normal
10	hours."		10 takes time to develop. I mean it goes without saying.
11	What one and three quarter hour period of		11 I cannot tell you how long. It doesn't take a minute,
12	time were you referring to?		12 and it doesn't take 15 minutes either.
13	A. Well, I believe that is the time that he spent in the		13 Q. Is there a range?
14	waiting room. You know, I don't remember what I		14 A. I don't know that range, but I can only tell you that
15	thought, but you see, he left the waiting room -- he		15 three times normal lungs do not -- is not an
16	went into the waiting room at 4:30. He left the		16 instantaneous condition.
17	waiting room after 6, like around 6:30 actually. He		17 Q. That is what I'm asking.
18	was pronounced dead at 7:40. Somewhere in that period		18 A. The lungs could have only weighed two times normal or
19	is an hour and a quarter.		19 maybe only somewhat wet lungs, but in this case they
20	Q. Okay. It's an hour and three quarters is what you put		20 weighed three times normal. That is a lot of weight.
21	in your report.		21 That is -- well, to give you a better example, that
22	A. Maybe it is then an hour and three quarters. I don't		22 would be -- let me just think a minute. Give me a --
23	really remember that. But the period was figured on		23 be patient with me. A half gallon, that would be like
24	from the time that he went out on the street where he		24 a gallon of -- that would be half -- that would be a
25	was supposed to go to catch the bus, but he really		25 gallon of fluid that the lungs had because the lungs

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1	normally weigh about 350 grams, 350 to 400, somewhere	1 underestimated. I don't know that. I can tell you
2	in that range.	2 this: To get lungs to weigh close to 2,000 ml takes
3	When you start having lungs that weigh	3 time. It is a lot of painful --
4	close to 2,000, that is a lot of weight, a lot of	4 Q. That is what I'm trying to get at, Doctor. How much
5	fluid. With that is the hard work breathing, not	5 time does it take?
6	getting enough oxygen and developing the anxiety that	6 A. I have told you. It takes a lot of time. How much is
7	goes with inability to oxygenate. That is what he	7 a lot? An hour and three quarters would qualify.
8	had. That is called dyspnea. That is called air	8 Q. Did it take an hour and three quarters for Mr. Dunigan
9	hunger. That is called all kinds of names.	9 to get to the point where he had what you claim was
10 Q.	Thank you. Now, my questioning started because you	10 this fluid accumulating in the lungs that caused the
11	put in your report one and three quarters hours. In	11 air hunger, difficulty breathing and dyspnea and fear
12	answer to my questions about that you said you weren't	12 of doom?
13	sure what period of time you were referring to.	13 A. Yes, that is exactly what I'm saying, that the buildup
14	My next question was what was going on with	14 of fluids in the lung -- imagine that each and every
15	Mr. Dunigan that allowed you to say that he was	15 air sac in the lung --
16	experiencing that utmost pain, that fear of imminent	16 Q. Unless you are going to say something that tells me
17	death, and I believe you then referred to how heavy	17 how long it takes, I really don't want to hear it.
18	his lungs were, but you couldn't tell me how long that	18 A. Well, I told you how long it takes. It takes an hour
19	would take. Is that kind of a synopsis?	19 and three quarters.
20	MR. DAWSON: Let me object to the form of	20 Q. That is your claim?
21	that question. First of all, he told you that the one	21 A. That is my claim.
22	and three quarter hour time was from the time he was	22 Q. And that is based on what in relation to this case?
23	in the waiting room until the time he went out to the	23 A. Well, when you have done 60,000 autopsies, either done
24	squad car, so your statement is wrong. That is my	24 myself or supervised, and you talk to relatives and
25	objection.	25 when did your uncle start snoring and when did this
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1	MR. O'LOUGHLIN: He changed that.	1 develop and when did that develop, then you develop a
2	BY MR. O'LOUGHLIN:	2 scale in your mind.
3	Q. Is that your testimony, Doctor, and your belief, that	3 Then you can even write a paper about it.
4	Mr. Dunigan had this utmost pain and the fear of	4 I never had the time to do that, therefore, I didn't
5	imminent death from the time he was wheeled into the	5 write a paper, but could I? Yes, I could write a
6	waiting room until the time he went in the police car?	6 paper about things like that. I'm telling you with
7 A.	Well, he was in the waiting room from 4:30 until 6:30.	7 total reliability that an hour and three quarters
8	That means he was in the waiting room -- just taking	8 would qualify.
9	those numbers he was in the waiting room two hours.	9 Q. Okay. Is that a possibility in this case?
10	He didn't get a ride from the police car. The police	10 A. That is a possibility, yes. That is a possibility. I
11	car wasn't even there when he went outside. It took	11 don't know -- I have told you I don't know exactly
12	time for them to come. Then it took time for them to	12 whether it's an hour and three quarters or an hour and
13	load him. Then it took time for them to drive to the	13 40 minutes or maybe even an hour and-a-half. I don't
14	jail.	14 know that for sure. But is it within the realm of
15	He was dead when they came to the jail, but	15 likelihood? Absolutely.
16	he died in the car. I don't know exactly the moment	16 Q. Would you expect that at the point where Mr. Dunigan
17	that he really died. He was pronounced dead at 7:40.	17 has this fear of doom, that he would at that point
18	According to the laws of this country everywhere you	18 have difficulty breathing, air hunger and dyspnea?
19	go all the medical examiners will tell you that a	19 A. He would have the same as anybody who is submerged in
20	person is dead when he is pronounced dead. He could	20 water with nowhere to go. He is fearful of dying but
21	have died three months earlier.	21 nowhere to go to escape. That is all conducive to
22	So consequently the period of time that I	22 this fear of dying, that there is no -- nothing for
23	thought was appropriate was an hour and three	23 him that he could do to escape that fate.
24	quarters. Maybe I'm wrong. Maybe I have exaggerated	24 Q. Okay. Can you point to any evidence that Mr. Dunigan
25	by 15 minutes, maybe I have not. Maybe I have	25 was experiencing air hunger, difficulty breathing or

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1	dyspnea up to the point he was placed in the police	1	which I figured out is most likely, that is the most
2	car?	2	likely time.
3	A. I don't really know that at that point it was to the	3	If you want me to cut it down, I can do a
4	point of being certain that he would die at the end of	4	deal with you. I think that is a joke. To tell you
5	it was more likely than not that that exactly	5	that it is an hour and-a-half, but then I have to add
6	happened, that he was building up fluids as the	6	a quarter of an hour to the end, which means between
7	minutes went by. As I said before, you don't build up	7	an hour and-a-half and two hours.
8	this fluid in the lungs in just a few minutes.	8	Q. Okay. I honestly don't think I got an answer to this
9	So therefore, how many minutes is it? I	9	question. Are you aware of any evidence that
10	can only say an hour and three quarters would be	10	Mr. Dunigan experienced air hunger, difficulty
11	within the realm. Is it a little bit less, a little	11	breathing or dyspnea at any time before he was placed
12	bit more? I do not know. So that is my answer. So	12	in the back of the police car?
13	you can take it or leave it.	13	A. Absolutely. The knowledge is that the amount of fluid
14	Q. What is the shortest period of time in which a patient	14	that he eventually had had to have been a long one
15	with a prolonged resuscitation effort can build up	15	because of the amount of weight of the lungs. That is
16	that degree of wet lung?	16	measured to the gram because she put the --
17	A. There can be no doubt -- not wet, but drowning lungs.	17	Dr. Douglas put the lungs on a scale and measured the
18	The shortest time begins only when we know and hear	18	weight of each lung separately. One was 800 some
19	that he is starting to snore. But it isn't snoring.	19	grams, and the other one was whatever it was. I don't
20	To say snoring means -- to the average person means he	20	recall. Close to the -- the total weight was over --
21	was sleeping and snoring. Lots of people snore when	21	close to 2,000, like 1,900 grams for both lungs.
22	they sleep. He wasn't sleeping. He was wide awake,	22	Q. Any evidence other than the weight of the lungs at
23	afraid to die. That is what he was.	23	autopsy that allowed you to say that Mr. Dunigan was
24	So to do with the sound that I heard on	24	experiencing any air hunger, difficulty breathing,
25	the -- coming from the automobile where he was trying	25	dyspnea or fear of doom before he was placed in the
	Page 94		Page 96
1	to find peace by lying down and wasn't let to lie down	1	back of the police car?
2	and had to sit up because they wanted him to sit up	2	A. Yes. All these things together, each one of those
3	because it is a matter of police procedure that I have	3	words and nouns and adjectives and whatever you said
4	acquainted myself so many times where I show you who	4	just now is in keeping with that opinion for the
5	the boss is here. That is what that is.	5	simple reason that the weight of the lungs like in
6	So how long? I don't know. An hour and	6	this case is almost in the maximum. You don't often
7	three quarters in this case.	7	have this kind of weight. The only equivalent to that
8	Q. What is the shortest period of time in which	8	is in drowning cases. Now, imagine that --
9	Mr. Dunigan could have developed the lungs that were	9	Q. Thank you, Doctor. Please listen to my question.
10	identified at autopsy?	10	Other than the weight of the lungs can you point to
11	A. If I give you the shortest way, I would also have to	11	any evidence indicating that Mr. Dunigan was
12	add that same amount to the longest way. That is not	12	experiencing air hunger, dyspnea, difficulty breathing
13	the longest way. The longest way is two hours. The	13	or fear of imminent death before the time he was
14	shortest way is quarter of an hour less.	14	placed in the police car?
15	Q. Is what?	15	A. Yes, because he was in need of air, but he had fluid
16	A. A quarter of an hour less. That means an hour	16	in the lungs. He was in need of air. That is why he
17	and-a-half to two hours.	17	was in a state of air hunger. That is why he was
18	Q. That is your claim?	18	trying to breathe and couldn't. That is why he was in
19	A. That is my claim.	19	a state of fear of death and all these other words
20	Q. All right. Is that based on anything?	20	that you mentioned. That is why.
21	A. Yes, on my experience. That is because I say so.	21	Q. Again, did you see on video or read in any testimony
22	That is not a very welcome statement to make to a	22	or any other information you have regarding this case
23	lawyer, but in this case I cannot -- you want me to be	23	any evidence that he was short of breath, having
24	a wizard. I cannot put my finger on the exact minute,	24	difficulty breathing, had dyspnea, had air hunger or
25	but I can tell you that an hour and three quarters,	25	fear of imminent death at any time before he was

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1	placed in the police car other than the weight of the	1 as much as a drowning victim.
2	lungs?	2 Q. Would it be your opinion that that amount of fluid in
3 A.	I cannot tell you that. The lungs only weigh that	3 the lungs would be evident to anyone looking at
4	much because of the fluid in it. You want me to	4 Mr. Dunigan and watching or listening to him breathe?
5	ignore that. I cannot do that. The man tells me by	5 A. I don't know what anybody would see or remember or try
6	his breathing that he is in a state of fear of death	6 to convince me that he was just on his way to a party
7	because he cannot breathe. That is indicated by the	7 when he was put in the police car. No, he was not.
8	foam and by the weight of the lungs and by the amount	8 He was fighting for survival because he could not
9	of fluid in them.	9 breathe. If somebody tells me he was not making any
10	Then I can tell you this: That when you	10 manifestations, let me tell you, they are lying.
11	weigh those lungs, once you take them out of the body,	11 Q. All right. Let's go with that. By the way, have you
12	you lose a significant amount of fluid because when	12 watched the video?
13	you cut the lungs as you do in an autopsy, you take	13 A. Yes, I did.
14	them out of the body, so you cut parts that would lose	14 Q. All of them?
15	some fluid. So it's even more than 1,900.	15 A. Yes. Several. I think three or four.
16	So don't make me say things that I don't	16 Q. Start to finish from the time Mr. Dunigan went into
17	want to say because I think that is nonsense what you	17 the waiting room until the time he was wheeled out of
18	are asking me.	18 the waiting room? Did you watch that video?
19 Q.	Did you see any evidence on the video -- did you hear	19 A. I watched several disks. I don't know if they were
20	anything that indicated Mr. Dunigan had any difficulty	20 three or four. I don't remember that because I didn't
21	breathing at any time before he was placed in the	21 put the videos into the computer. My office manager
22	police car?	22 did that. I watched them.
23 A.	Well, when the lungs contain a lot of fluid, you have	23 Q. Do you know whether you watched the complete video of
24	difficulty breathing. Take it from me. Take it from	24 the time period from where the surveillance in the
25	those who survived a drowning. Take it from any one	25 waiting room is shown on the video?
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1	of those kind of people, including myself, and I will	1 A. Yes. I watched in the waiting room. I watched the
2	tell you.	2 videos outside on -- outside the door of the entrance
3	You put the body in a swimming pool and put	3 door to the Emergency Department. I watched -- well,
4	the body on the bottom, they will tell you too. If	4 as I said, I watched all the videos that were sent
5	they ever get the chance of getting out of the pool,	5 here.
6	they will tell you what went through their mind.	6 Q. That is my question. Did you watch them in realtime,
7 Q.	Did you see or hear anything on the video that	7 or did you fast forward?
8	indicated to you that Mr. Dunigan had any difficulty	8 A. No, not fast forward. Realtime.
9	breathing, air hunger, dyspnea or fear of imminent	9 Q. You watched the entire video, all three sets of
10	death before he was placed in the back of the police	10 videos, from the surveillance in the waiting room, the
11	car?	11 outside exterior camera at Bronson which shows him on
12	MR. DAWSON: Objection, asked and answered.	12 the sidewalk and the video from the back of the police
13	Go ahead, Doctor.	13 car?
14 A.	I don't know that I have. I don't know that I have	14 A. Yes, I did. It took a long time. I can tell you that
15	heard it before. I wasn't there on the premises. I	15 too.
16	don't know that I even have pictures of him before he	16 Q. We know exactly how long it took because all those
17	was loaded up into the car, but I do know that he was	17 videos have times on them.
18	restless when he was in the car. Before that I	18 A. Yes. I don't remember what time it took because I
19	necessarily did not see him. I don't know what he did	19 didn't look. But it took a long time. I know that.
20	before.	20 Q. Great. At any time before Mr. Dunigan was placed in
21	BY MR. O'LOUGHLIN:	21 the back of the police car are you aware of any
22 Q.	Thank you.	22 evidence indicating that he was foaming at the mouth?
23 A.	But I can visualize that with that amount of fluid he	23 A. I don't know what he did at each time. I cannot tell
24	had to have had not just 10 minutes or 15 minutes or	24 you. I can only tell you what he is likely to have
25	not even just an hour to develop enough fluid to have	25 done because of the weight of the lungs, because of

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1	the amount of water in the lungs, because all that	1 conveniently, that he was given oxygen at the same
2	would have caused him to be short of breathing space	2 time.
3	because most of the lungs were occupied by edema, by	3 Q. On room air. No.
4	fluid. So that causes someone to not be able to	4 A. On room air. That is marked in the records that it's
5	breathe and have air hunger.	5 on room air, right?
6	So if he is an exception, well, I don't	6 Q. Yes.
7	know. There is no exceptions to air hunger. When you	7 A. Okay. Well, tell me another one. He was building up
8	don't have ability to breathe, you develop air hunger,	8 fluids.
9	whether you like it or you don't.	9 Q. You are saying that couldn't have been the case when
10 Q.	You would expect that to be visible to someone who was	10 he was in the Emergency Department being examined by
11	looking at him?	11 Dr. Regot?
12 A.	I don't know what somebody observes when he observes	12 A. Well, he was in the Emergency Department because of
13	air hunger. Maybe he calls it something else. I	13 chest pain, and the chest pain was obviously not from
14	don't know. I don't know that. But I do know what	14 falling off the bus or falling on the cement. So he
15	people who come out of water what they think about	15 had no injuries according to this doctor. So you
16	drowning, and that is drowning in your own fluids.	16 can't have it both ways. Okay. Thank you very much.
17 Q.	By the way, you would agree that he had no signs or	17 I think I'm going to leave now. You have kept me way
18	symptoms of air hunger, dyspnea, difficulty breathing	18 beyond 5:00. I don't know what the time is. What is
19	or wet lungs while he was being examined in the	19 the time?
20	Emergency Department, true?	20 COURT REPORTER: 5:52.
21 A.	I don't know what he exhibited there. There is no	21 A. 5:52. So it's an hour later. It's almost 6:00.
22	mention of him having snoring breath sounds when he	22 BY MR. O'LOUGHLIN:
23	was in the emergency room. There is no mention in	23 Q. So you are terminating the deposition?
24	this doctor's records that he heard or saw air hunger.	24 A. Well, I'm not terminating anything, but I mean I have
25	I don't even know that he knows that term. I have no	25 asked you to let me go out of here at 5:00, but you
Page 102		Page 104
1	idea. Maybe he calls it dyspnea. I have no idea. I	1 didn't. So now you can keep me until midnight.
2	don't know this doctor.	2 Q. I asked you if you wanted a break. You said you
3 Q.	If Mr. Dunigan was in the condition you are describing	3 wanted to go ahead and finish, which I am very close
4	in the Emergency Department, would you expect him to	4 to doing if I can get an answer to my question.
5	have a regular respiratory pattern?	5 A. Okay.
6 A.	I don't know what a regular respiratory pattern is	6 Q. Would a patient with pulmonary edema to the extent
7	when somebody has edema in the lungs because he	7 that the patient is experiencing the fear of doom be
8	probably did have edema because those coronaries did	8 expected to have clear lungs to auscultation
9	not afford him good health. So was he -- did he have	9 bilaterally, no respiratory distress, normal breath
10	edema/fluid in the lungs? I'm sure he did. He was in	10 sounds, no rales, no wheezing, a regular breathing
11	congestive heart failure.	11 pattern and a 98 percent oxygen saturation on room
12 Q.	And you are saying that was the case when he was in	12 air?
13	the Emergency Department being examined by Dr. Regot?	13 A. I'm inclined to believe, since I cannot believe that
14 A.	Exactly.	14 the doctor over there in the emergency room did not
15 Q.	All right. Let's stick with that. That is what you	15 hear him snore. So I believe that he probably did not
16	just said, true?	16 snore at that time, but he did snore later on, and it
17 A.	Yes. Exactly. Yes, and I sign it.	17 got worse and not better because he didn't do anything
18 Q.	All right. Listen to me, please. Would you expect	18 to make this patient get better. He just gave him an
19	someone who was -- who had edema of the lungs and	19 x-ray. The x-ray didn't touch him as far as improving
20	congestive heart failure on clinical examination to	20 his condition. The x-ray didn't do anything.
21	have no respiratory distress, normal breaths sounds,	21 Q. Are you able to --
22	no rales, no wheezing, clear lungs on auscultation	22 A. I'm sorry?
23	bilaterally, a regular respiratory pattern and a 98	23 Q. Are you able to answer my question?
24	percent oxygen saturation?	24 A. Yes. I am answering your question. You just don't
25 A.	On oxygen, right? Now, that you didn't tell me	25 like the answer.

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1 Q. Was your answer that you didn't believe those findings	2 were correct?	1 Q. Does that mean you can say that it was occurring while	2 he was in the Emergency Department?
3 A. No, I didn't say that. I said he probably was not	4 snoring at the time, but the snoring developed while	3 A. Yes.	4 Q. Which was --
5 he was in with him from 2:13 until 4:30. Then at 4:30	6 he was in the waiting room. So for another two hours	5 A. I'm saying because the waiting room is the Emergency	6 Department also.
7 or hour and-a-half. So did he have all of these	8 manifestations at that time? Maybe not. Maybe he had	7 Q. No. We have already distinguished that, but I will	8 try it again. Up to the time he went to the waiting
9 a few other manifestations, but that he was without	10 any edema and he was perfectly fine and he was on his	9 room after he was discharged from the Emergency	10 Department are you aware of any evidence indicating
11 way to the dancing club, no, that he wasn't. He	11 that he had any respiratory difficulty or pulmonary	11 edema whatsoever?	12
12 wasn't on his way to the dancing club.		13 A. I have already answered this I don't know how many	13 times today. I will answer this one more time, sir.
13 He was in dire condition. He had two	14 coronary arteries that were almost obstructed. Almost	14 Q. Then after that I hope you will have the decency of	14 letting me out of here.
15 obstructed, well, they were one percent short of being	16 almost obstructed. So you are telling me that this	15 Q. I think it can be answered yes or no.	15
17 didn't manifest itself in any way? Well, you must	18 think that I was born yesterday.	16 A. Then ask me again.	16
19 Q. Would the findings described be completely	20 inconsistent with a patient who has pulmonary edema to	19 Q. Are you aware from the time -- pardon me -- up to the	19 time -- before the time that Mr. Dunigan was
21 the extent that they are suffering the fear of	22 imminent death?	20 Q. discharged from the Emergency Department to the	20 waiting room are you aware of any evidence indicating
23 A. I didn't say that he had fear of imminent death in the	24 first two hours in the emergency room. I didn't say	21 Q. that he had any respiratory difficulties whatsoever?	21
25 that.		22 A. No, I do not.	22
23 Q. That is what I'm trying to ask you, Doctor.	24 A. Thank you.	23 Q. Page 106	23 Page 108
24 A. I didn't say that. I said he was not breathing heavy.	25	1 A. Okay.	1 A. Okay.
3 I didn't say that he was -- that Dr. Regot heard him		2 Q. Do you know when Mr. Dunigan lost consciousness?	2 Q. Do you know when Mr. Dunigan lost consciousness?
4 snore but he didn't say it. I didn't say that. He		3 A. I'm sorry?	3 A. I'm sorry?
5 developed the pulmonary edema down the line, this		4 Q. Do you know when Mr. Dunigan lost consciousness?	4 Q. Do you know when Mr. Dunigan lost consciousness?
6 heavy pulmonary edema that caused him to be heard		5 A. He lost consciousness in the automobile.	5 A. He lost consciousness in the automobile.
7 around the block. That is the pulmonary edema he		6 Q. What --	6 Q. What --
8 ended up with.		7 A. Yes, he lost consciousness in the automobile because	7 A. Yes, he lost consciousness in the automobile because
9 Q. Is there a single piece of evidence that you are aware		8 when -- yes. When he was not getting oxygen, he lost	8 when -- yes. When he was not getting oxygen, he lost
10 of that Mr. Dunigan exhibited any respiratory symptoms		9 consciousness.	9 consciousness.
11 that would indicate pulmonary edema or anything else		10 Q. Do you recall from the video and audio in the police	10 Q. Do you recall from the video and audio in the police
12 while he was in the Emergency Department before he		11 car that after the officers got into the car	11 car that after the officers got into the car
13 went to the waiting room?		12 Mr. Dunigan asked them if they could take the cuffs	12 Mr. Dunigan asked them if they could take the cuffs
14 A. I don't know. There is no such thing mentioned, but		13 off?	13 off?
15 there is plenty mentioned later on because I heard it,		14 A. Yes, I know that. He was conscious then.	14 A. Yes, I know that. He was conscious then.
16 and that did not develop --		15 Q. Did he indicate that he was having any difficulty	15 Q. Did he indicate that he was having any difficulty
17 Q. I don't care about later on, Doctor. Please listen to		16 breathing or respiratory difficulty at that time?	16 breathing or respiratory difficulty at that time?
18 my question.		17 A. No, he didn't, but he wanted the handcuffs off because	17 A. No, he didn't, but he wanted the handcuffs off because
19 A. No, no, no, no. You are misleading, sir. By		18 it's more comfortable than having your wrists tied	18 it's more comfortable than having your wrists tied
20 doing that you are misleading me and the reader of		19 behind your back. He was not comfortable. The	19 behind your back. He was not comfortable. The
21 this deposition. You are misleading asking me like		20 decency of the police officer would have been to	20 decency of the police officer would have been to
22 that.		21 comply with the request. It wouldn't have hurt them	21 comply with the request. It wouldn't have hurt them
23 I am saying that this snoring in the car		22 to do that.	22 to do that.
24 did not develop instantly, and I tell you that again		23 Q. At that time, the time he asked to have the cuffs	23 Q. At that time, the time he asked to have the cuffs
25 and again and again.		24 taken off, did he indicate that he had the fear of	24 taken off, did he indicate that he had the fear of
		25 imminent death?	25 imminent death?

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1 A.	No. Come on now. You know that he didn't do that.	1 because that breathing is ominous. And if you hear
2	No, he didn't do that.	2 it, you know that somebody is breathing and probably
3 Q.	Okay. From that point how long was it before he lost	3 conscious because that breathing is fighting for air.
4	consciousness?	4 Q.
5 A.	I don't know when he lost consciousness. He was found	5 What makes you say that that means they are probably
6	dead. They were most surprised. How did this faker	6 conscious?
7	die of fake?	7 A. Because he's fighting for air. He cannot go to sleep.
8 Q.	Do you know how long --	8 Q. Were you involved at all in Dr. Kevorkian's case?
9 A.	That was strange.	9 A. Yes. I did autopsies on some of his victims.
10 Q.	Do you know how long Mr. Dunigan was conscious in the	9 Q. Were you involved in any of the litigation?
11	back of the police car?	10 A. No, I was not.
12 A.	I don't know. But when they put him in there, he was	11 Q. Did any of Dr. Kevorkian's victims have that utmost
13	conscious. He was conscious when he asked for the	12 worst pain, no greater fear than the fear of imminent
14	cuffs to be removed. How long he was unconscious	13 death?
15	before he was pronounced dead I have no idea. Nobody	14 A. You know, I don't remember that. That is too long
16	knows when he died.	15 ago. I don't remember.
17 Q.	That was my question. That was my question, Doctor.	16 Q. All right, Doctor. I will tell you in advance that I
18	Thank you. You don't know, right?	17 will protest any bills for the time this deposition
19 A.	I don't know because nobody knows when he actually	18 took beyond what was the \$2,500 that we paid you. I
20	died. We know that he was pronounced dead at 7:40,	19 will take it to the Judge with this transcript to
21	but when he actually died we do not know in the	20 explain why it took so long.
22	presence of those cuffs.	21 MR. VANDERLAAN: Doctor, this is Allan
23 Q.	Okay. So you also don't know how long he experienced	22 VanderLaan. I pray for your continued good health and
24	any conscious pain and suffering, true?	23 that you see many more sunrises. Mr. Dawson, I didn't
25 A.	I assume that he died shortly before they arrived at	24 see you, but --
Page 110		25 MR. DAWSON: That's all right. I am here.
1	the police station, but I cannot be absolutely sure.	Page 112
2	It can be before, and it can be later. I do not know	1 MR. VANDERLAAN: It's been a pleasure.
3	exactly. I do not know. I would have to speculate	2 Thank you.
4	when he actually stopped breathing and had a	3 MR. DAWSON: Good seeing you all.
5	heartbeat.	4 (The deposition was concluded at 6:05 p.m.
6 Q.	So you are --	5 Signature of the witness was not requested by
7 A.	They certainly never made an effort in the police car	6 counsel for the respective parties hereto.)
8	to determine when he died, to be aware that he	7
9	suddenly stopped breathing because God only knows when	8
10	he breathed, he let them know that he is breathing by	9
11	snoring loud and clear, and suddenly it stopped.	10
12 Q.	You are unable to offer an opinion as to how long	11
13	Mr. Dunigan experienced conscious pain and suffering	12
14	while in the back of the police car, true?	13
15 A.	He stopped breathing at some time in the police car.	14
16	When the exact minute was that he stopped breathing I	15
17	cannot tell you.	16
18 Q.	And stopping breathing -- one can be breathing and	17
19	still not be conscious, true?	18
20 A.	Say that again.	19
21 Q.	One can be breathing but unconscious, true?	20
22 A.	Well, you can snore and be unconscious, so I guess you	21
23	can breathe and be unconscious. But --	22
24 Q.	All right.	23
25 A.	But when you stop breathing, the neighborhood knows it	24
		25

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1 CERTIFICATE OF NOTARY

2 STATE OF MICHIGAN)

3) SS

4 COUNTY OF OAKLAND)

5

6 I, Linda S. Wilson, certify that this
7 deposition was taken before me on the date
8 hereinbefore set forth; that the foregoing questions
9 and answers were recorded by me stenographically and
10 reduced to computer transcription; that this is a
11 true, full and correct transcript of my stenographic
12 notes so taken; and that I am not related to, nor of
13 counsel to, either party nor interested in the event
14 of this cause.

15

16

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19



20 LINDA S. WILSON, CSR-0973

21 Notary Public,

22 Oakland County, Michigan.

23 My Commission expires: 2/24/19.